ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1879.

WITH INDEX.

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The Council met at Government House on Wednesday, the 15th January, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
Lieutenant-General the Hon'ble R. Strachey, R.E., C.S.I., F.R.S.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble E. C. Morgan.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmed Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.

STAMP BILL.

The Hon'ble MR. COCKERELL moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Stamps be taken into consideration. He said there were two reports before the Council; the first or preliminary report had been presented by him to the Council at the commencement of September last, and at the time of its presentation he had explained very fully all the material amendments of the existing law for which the Bill, as then amended, provided. That report, together with the Bill, had been published, and from the communications which had been received from the various Local Governments he was in a position to state that this publication had extended to every Province of the Empire; it was further apparent, from the communications received, that the proposed alterations of the law had attracted the attention of public bodies and persons, such, for instance, as the British Indian Association, the Trades Association, the Association of Attornies, vakíls of the High Court and articled clerks—in short public bodies and persons who might be taken as fairly representing the

sections of the community who would be most interested in a measure of this kind; so that it might reasonably be assumed that the proposals of the Committee in regard to the alteration of the Stamp-law had obtained ample publicity. In regard to this preliminary report, he need only add that the various communications received alike from official and non-official sources were in the sense of a general approval of the provisions contained in the amended Bill, and some of these communications had especially commended the exclusion of all matter relating to Court-fees. But although, as a matter of convenience, the amendment of the law in regard to Court-fees had been altogether dropped out of this Bill, it must not be supposed that the need for fresh legislation on the subject was by any means to be ignored, or in fact that such legislation was not as necessary and as urgent as the amendment of the law with which the Council was now dealing.

But any proposal for the amendment of the law in regard to Court-fees introduced into this Council as a substantive measure dealing exclusively with that subject would be obviously incomplete if it avoided the question of the propriety of distinctly affirming the fitness of, and consequent desirability of maintaining, the existing rates of fees on the institution of suits, or of introducing such amendments of those rates as might be thought desirable. The Court-fees Act had now been in operation for nearly nine years, and as during a considerable part at least of that period there had been abnormal activity in litigation, it might fairly be said that sufficient experience had been gained to show whether the rates of institution-fees prescribed by the existing law were such as should be maintained permanently or modified. Connected also with the subject of the amendment of the law relating to Court-fees was the question of maintaining as at present, or enhancing, the rates of fees on probates, letters of administration and certificates of administration. But until the law relating to certificates of administration (Act XXVII of 1860) had undergone some alteration, it would be of no use to alter the existing rates; for practically that law was so defective as regards the provision for compelling the payment of the full fee chargeable, that until this defect was remedied, the determination of a proper rate was of secondary importance. The question of the amendment of the working provisions of Act XXVII of 1860 had been somewhat complicated by a proposal which had been recently made for extending the system of granting certificates for the collection of the debts due to the estate of a deceased person, to the grant of letters of administration to the entire estate of such person. It was probably well known to the Council that as a matter of fact these certificates for the collection of debts were largely used as though they were letters of administra-

tion to the whole property of the deceased person, and it had been proposed in consequence of this well-known practice to make the law more in accordance with the practice. Whilst that project was under consideration, consequently, and the question as to the best mode of levying fees in suits remained unsettled, there were difficulties in the way of proceeding immediately with legislation relating to Court-fees. But he hoped that the matter would be vigorously taken in hand as soon as might be practicable, and that as the general Stamp Act of 1869 had been followed by the Court-fees Act of 1870, so, if this Bill should become law, the Stamp Act of 1879 would be followed by a Court-fees Act of 1880.

Turning now to the subject of the second report, he might remark that the further alterations recommended by the Committee had been adopted in consequence of the representations which they had received on the publication of the preliminary report, and these, though numerous, were not for the most part of any very great importance. The only further change which it was proposed to introduce into the schedule of rates of duties was an increase of the duty chargeable on general powers-of-attorney, to which matter he would advert presently. The rest of the alterations might be said to be confined to improving the arrangement and wording of the rules and procedure laid down in the several sections of the Bill, and rendering the whole subject generally more intelligible. Amongst the changes of this character he might specially notice the following:—Under section 9 of the Bill, a power had been given to the Governor General in Council to provide by rules for the number of impressed stamps which might be used for stamping any instrument, and the size of the paper to be used in the case of hundís or Native bills of exchange. The number of stamps to be used was now to be fixed by rule instead of, as had hitherto been done, by a substantive provision of the Act itself. The provision of the existing law was so far imperfect that it merely prohibited the use of more than one stamp when the duty chargeable did not exceed one thousand rupees, and a single stamp for the amount required was readily procurable; but it made no regulation as to the number of stamps to be used when the conditions just mentioned did not apply; and the fact was that something more elastic than could be supplied by a substantive provision of the Act was required to regulate matters of this kind; and the Committee had therefore, he thought, done wisely in taking out of the Act the determination of a matter of this kind and leaving it to be settled by rule.

With regard to the provision in the same section for regulating the size of the paper to be used for hundís, he thought he could perhaps better explain its object by stating to the Council the different modes of stamping instruments now in force.

By far the largest number of instruments executed in British India were written on paper bearing an impressed stamp and sold by the Government; but inasmuch as this stamp-impressed paper was unsuitable for instruments drawn up in English form, the Government conceded (by rule) the privilege of writing such instruments on unstamped paper and bringing the same, before the instrument was executed, to the Collector or other specially appointed officer, in order that the paper might be stamped by him.

Amongst the instruments to which this privileged mode of stamping extended were bills of exchange, and as this class of document included hundís, they might be so stamped. Paper stamped by the Collector in the same manner as unexecuted documents brought by private persons was supplied and sold by the Government to be used for hundís. So that there were two kinds of hundí-paper in use under the present law, and it had been found—he believed in both cases—that frauds were practised by cutting off the portion of the paper so stamped, upon which there was any writing, in the case of time-expired hundís, and using the clear portion of the stamped paper again, either once or more often as the size of the paper might permit. The new provision therefore was designed to prevent this fraud, and to make the provision effective it would further be necessary to exclude hundís from the privilege above described, which had heretofore been accorded to bills of exchange generally,

This regulation of the size of paper therefore would be confined to the case of paper sold by Government, and could not therefore be productive of any inconvenience to the public. No doubt it would be extremely convenient to the public if a larger use of adhesive stamps could be permitted, but the use of adhesive stamps, except under special conditions, that is to say, where the stamp was to be affixed by somebody responsible to the Government in some way or other, would be sure to entail great loss of revenue through frauds; and the Legislature was therefore obliged to be very chary of extending this provision. In section 10, two such extensions were provided for—one in the case of notarial acts, and the other of entries of the names of advocates, vakíls or attornies of the High Courts. In the case of notarial acts, the stamps had to be affixed by the Notary, who, though not a public officer in the technical sense of the word, was under the control of public officers; he had moreover no interest in avoiding the obligation of affixing a stamp, because the cost of providing the stamp would have to be found by somebody else. And in the case of entries of the names of advocates, vakíls or attornies on the roll of a High Court, the act of fixing the stamp was to be performed by an officer of the Court, and the paper upon which it was to be affixed remained in the Court. Therefore, in these two instances, the extension of the privilege of the use of

adhesive stamps could be safely conceded with due regard to the interests of the revenue.

Sections 30 and 31 of the Bill related to the adjudication of the proper duty chargeable in any case. It had been suggested to the Committee that they were wrong in their first amendment of the law in omitting to provide for the penalty where the instrument brought for adjudication had been previously executed, and no doubt the English law required in all cases of *executed* instruments that the penalty should be paid; but the Committee had considered this matter very carefully, and the conclusion to which they came was that, in this country, where there was greater ignorance perhaps on the part of those who had to execute instruments as to the requirements of the Stamp-law, it was very desirable that a person should have the opportunity, without liability to any fine, and on payment of a very small adjudication-fee fixed by law, of resolving all honest doubt as to the amount of duty with which his instrument might be chargeable; and it was to be observed that as the Bill was framed, although executed instruments might be brought to the Collector for adjudication of the proper duty, they could only be so brought within one month of their execution; and it was thought that such a qualification was sufficient to secure the restriction of the privilege to cases in which there was a real uncertainty as to the proper stamp to be used and a *bonâ fide* desire to have such doubt removed.

Some alteration had been made in the language, but not in the substance, of section 40 of the Bill. That section, or its corresponding section in the Bill published, drew forth the criticism that it was quite unnecessary to say that the Collector might prosecute in certain cases, because another section in the chapter on criminal penalties laid down the conditions of offences very clearly, and also gave power to the Collector to prosecute in respect of *all* offences. It seemed therefore desirable to explain what the exact object of the provision contained in section 40 was. The language had been altered in order to indicate that object more clearly. The object was to show that, the Bill providing for a double set of penalties in circumstances constituting the same offence, both provisions might be worked concurrently, and were not intended to have a merely alternative operation.

In section 54 of the Bill provision had been made for a refund of the value of a stamp bought with the *bonâ fide* intention of using and which was not required for use. That provision had been inserted in consequence of the alteration of section 68 of the Bill, which had now been drawn so as to exclude

absolutely sales of stamps by persons not licensed to sell. The Committee, it would be seen from the changes made at different stages of the Bill, had been undecided in their opinion in regard to this matter. The Bill as introduced, like the Bill now before the Council, had been framed so as to absolutely prohibit the sale of stamps by unlicensed persons. In consequence of representations made in regard to that prohibition, the amended Bill published with the preliminary report (Bill No. II) contained a provision by which the sale of stamps by private persons was allowed in certain cases and under certain conditions. But it had been pointed out to the Committee that whatever conditions they might impose, if the sale of stamps was allowed in any form by private persons, the privilege would be greatly abused. MR. COCKERELL could perhaps best describe to the Council the arguments urged on this side of the question by reading an extract from one of the papers received. The Judge of the Assam Valley Districts wrote :—

> Every one is familiar with the practice which prevails in India, of persons buying stamps from licensed vendors and selling them after several years, yellow with age, to any one wishing to use them for forging deeds of more or less ancient date. The Bill implies that the Legislature will not interfere with this practice. As for the provision in section 66, that the original purchaser must have purchased *bonâ fide* to avoid a prosecution, it is, I think, of little value, as false evidence is easily procurable on this point. A purchaser, who has bought a stamp for which, after purchase, he has found no use, might, I think, be allowed to return it to the treasury within a given period, a refund of its value being made to him ; and if this is done, I do not see what ground exists for permitting a purchaser to re-sell.

The Committee on mature consideration of this question thought it was perhaps best to prohibit sales of stamps by private persons and to facilitate the recovery of the value of any stamp-paper which was not required for use.

The only material change in the schedule which he need notice was that which he had already incidentally referred to, namely, the enhancement of the duty on certain powers-of-attorney. The change would be found in article 50 of the schedule. The Committee had provided that, where the number of persons appointed under one power-of-attorney exceeded a reasonable allowance—and by reasonable allowance he meant ten persons,—an extra rupee should be levied upon the power-of-attorney in respect of every additional. person appointed under it. The provision was novel certainly: it could not be said to derive any support from anything in the English law on the subject, but then the practice in England was very different. A single power-of-attorney for general purposes in favour of a very large number of persons was hardly ever met with. But in this

country they had instances where 116 and 85 persons were appointed by one power-of-attorney, and the local Revenue-authorities, considering that that was an abuse, had ordered that the general power-of-attorney should be recognized only as covering the appointment of a single person. That order obviously was not warranted by the present law, and had to be withdrawn. But there was no doubt that the extent to which powers-of-attorney were being made to cover the appointment of a large number of persons did require some remedy, and the best mode of dealing with the subject was thought to be the course which had been adopted in the present Bill, namely, the imposition of an extra duty of one rupee for every person in excess of ten appointed under the power-of-attorney. The enhanced rate would fall only on persons who could very well afford to pay it, namely, persons who had to appoint a large number of agents because they had property in a correspondingly large number of places.

Having thus briefly commented upon the material changes introduced into the Bill now before the Council, he would proceed very briefly to notice the suggestions which had been made to the Committee, but which had not been adopted. The Committee was strongly advised by the Government of the North-Western Provinces and some of its subordinate Revenue-officers to exclude, from the definition of instrument of partition, partitions effected by the Revenue-authorities. It was urged that it would be inconvenient in practice, because it would be difficult to say at what particular stage of the proceedings this duty should be levied; that, moreover, partitions by the Revenue-authorities were very costly proceedings, and it was not desirable to increase their cost by the imposition of an *ad valorem* stamp-duty. As regards the period at which the duty should be levied, the Bill proposed that the stamp should be borne by the paper recording the final order for effecting a partition, and that final order might be the final order of the Collector or of the Commissioner, or of the chief controlling Revenue-authority; but the word "final" pointed to the stage at which the duty was to be paid. Then, as to the cost of effecting partitions being very great, from MR. COCKERELL's own experience he should say that they were only very costly when great obstructions to the proceedings were made by some of the parties concerned. These partitions, which in some instances extended over several years, and involved protracted and consequently expensive deputations of Amíns, were invariably cases in which some of the parties to the transaction were passively obstructing the progress of the work, by not producing necessary papers and in other ways withholding assistance required from them; he did not think that a case had been made out for excluding from liability to stamp-duty partitions effected by the Revenue-authorities; and to impose the liability to duty on some partitions,

whilst the largest and most important class was to be specially exempted from the tax, would in his opinion be inequitable.

The Board of Revenue of the Lower Provinces also had again pressed their former proposal to compel the payment of stamp-duty on intermediate transfers of shares. The Committee had been unable to adopt the suggestion of the Board, for the simple reason that there was no way in their opinion by which the duty could be levied in such cases; for the transactions were not reduced to writing further than that a signature upon a blank deed was taken; but the whole conditions of the transfer and the obligations of the parties under it were matters of oral or parol contract; hence the document could not operate as a conveyance or be produced in Court as evidence, and there seemed consequently to be no ground for subjecting it to duty, even if any feasible mode of compelling the payment of duty could be devised.

The circumstances of the case in great measure resembled that of successive purchase and sub-purchases of property where only one conveyance of the property forming the subject of such purchase and resale was made.

In such cases one conveyance-duty only was chargeable, and the principle of this rule seemed to apply to the case under notice.

The third and last case in which the Committee had been unable to adopt the course recommended was in regard to the allowance of appeals against, and revisions of orders and certificates of, a Collector. It seemed very undesirable that these questions as to the proper stamp-duty should remain long undecided. In England there was only one authority by which such questions were disposed of—the Inland Revenue Commissioners; and in this country the Collector must for these purposes be treated as taking the place of the Inland Revenue Commissioners. But this withholding of a power of appeal or of revision, in individual cases, did not take away the general power of revision which every controlling authority could exercise over its subordinates; and it seemed quite sufficient to prevent the subordinate Revenue-authorities from going very far in a wrong direction, that there was always the probability of any specially misdirected application of the law being made the subject of orders for the future guidance and direction of the subordinate authorities concerned.

He would now in conclusion briefly summarise the effects of the amended Bill in modifying the provisions of the existing law.

It provided for a direct increase of duty in the case of the following instruments :—

I. Bonds, Conveyances, Leases, Mortgages, Settlements,	where the amount involved exceeds Rs. 10,000.
II. Bonds and other instruments chargeable as Bonds,	where the amount involved exceeds Rs. 10, but does not exceed Rs. 25.

III. Policies of insurance other than insurance against risks by sea.

It substituted *ad valorem* duties for fixed duties in the case of—

(1) Instruments guaranteeing repayment of loans at short periods,
(2) Instruments of gift,
(3) Instruments of exchange, and
(4) Instruments of partition.

It imposed a new duty on the entry of names of advocates, vakils and attornies on the rolls of any High Court. These were the material increases of the stamp-duties imposed by the existing law. *Per contra*, the Bill provided for the reduction of the maximum limit of *ad valorem* duty in four classes of instruments—

(1) Indemnity-bonds,
(2) Security-bonds,
(3) Transfer of interests secured by other stamped deeds, and
(4) Surrenders of leases.

What these alterations in the rates of duty were likely to produce in the way of increased revenue, MR. COCKERELL had attempted to show when he presented the preliminary report of the Select Committee. Further, the present Bill aimed at rendering the Stamp-law generally more intelligible, by clearer interpretations, by a better arrangement of the matter of the law, and by the simplification of the Schedule. And it was specially designed to effect to a great extent the prevention of the evasion of the payment of duty, by the more stringent provisions which it introduced for dealing with instruments insufficiently stamped, and for putting a pressure upon the Courts to co-operate in the protection of the revenue. Of these dif-

ferent measures he should expect most from the more stringent provisions of the Bill for checking evasion. There could be no doubt, he thought, for the reasons he gave when presenting the preliminary report, that the majority of the Courts—he did not speak of *all*—were unwilling to give sufficient attention to the protection of the interests of the revenue. Why this should be so he himself did not, and never had been able to, understand—why the Court, which recognised its responsibility to protect one individual from wrong-doing by another, or to give redress where wrong was inflicted by one person upon another, should be so slow to act when the wrong inflicted affected a large number of persons, he could not say, but such was certainly the case; for it must be obvious that the wilful evasion of stamp-duties or of any other tax differed from any act of fraud or attempted misappropriation of property in this only, that whereas in the latter case the wrong was inflicted by B. upon C.; in the former it was inflicted by B. upon all the other letters of the alphabet; because the person who wilfully evaded the payment of duty was attempting to shift the burden of taxation from his own shoulders to the shoulders of the community generally; for if the treasury lost by the excessive evasion of stamp-duty, the loss must be replaced by some other means of taxation.

He (MR. COCKERELL) would only further say that he was not so sanguine as to suppose that the Bill, which, if it became law, must, by reason of its affecting the transactions of such a large number of persons, be subjected to so much wear and tear, would be found absolutely without defect; but he did venture to hope that it would be found to work more conveniently and satisfactorily to the public—as being generally more intelligible—and at the same time produce a larger revenue, than any of its predecessors.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended be passed. He desired, before the motion was put to the Council, to supply an omission in his previous remarks. He had omitted to offer the explanation which seemed to be called for by some of the criticisms received in regard to the Bill as first amended, in respect of the definition of "receipt" having been framed so as to cover receipts by advertisement. It had been said that an adhesive stamp could not be affixed to the paper bearing such advertisement, and no doubt this was so. But then the Committee deliberately desired to stop the practice of advertising receipts of money exceeding Rs. 20, because, so long as persons obtained the acknowledgment of their payments of money by means of those advertisements, it was hopeless to expect them to exercise their

power—a power given to them for the protection of the revenue—of demanding receipts which would have to bear a stamp. No inconvenience would result to the public from the stoppage of advertised receipts in these cases; and the Committee clearly were bound to consider the interests of the revenue and the necessity for protecting them before the convenience of newspaper proprietors.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to the maintenance of coast-lights in the eastern part of the Bay of Bengal, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Rivers Thompson and Cockerell and the Mover. He had, when obtaining leave for its introduction, stated the object and reasons for the measure. He had now only to mention that the voyages which would for the first time be brought within the scope of the law relating to the Burma coast-lights were as follows:—

Voyages from ports in British Burma to Chittagong and places west of Chittagong;

Voyages from Chittagong to ports in British Burma;

Voyages to or from Chittagong and places west of Chittagong (except Calcutta), from or to Port Blair and places east of Mergui;

Voyages from places east of Mergui to Rangoon, and from Rangoon and ports in British Burma west of Rangoon to places east of Mergui;

Voyages to or from any port in British Burma other than Tavoy and Mergui, from or to Port Blair.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette*, the *Bombay Government Gazette*, the *Fort Saint George Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments, respectively, think fit.

The Motion was put and agreed to.

OUDH LAND-REVENUE ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. COLVIN introduced the Bill to amend the Oudh Land-Revenue Act, 1876, and moved that it be referred to a Select Committee con-

sisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Stokes and Cockerell, and the Hon'ble Sayyad Ahmad Khán and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON moved for leave to introduce a Bill for the regulation of hackney-carriages in certain municipalities and cantonments. He observed that the Bill was the result of a strong representation by His Excellency the Commander-in-Chief and by the Government of the Panjáb regarding the ill-regulated and unsatisfactory condition of the hackney-carriage service in the principal cantonments and municipalities of that Province—a public inconvenience which, it appeared, could not be effectually removed without the aid of legislation.

In proof of the ill-condition of the Panjáb hackney-carriage service, he might, if need be, cite eloquent passages from official correspondence and representations in the local journals, but he would not take up the time of the Council by so doing; for personal knowledge enabled him to state that its condition might be briefly, but accurately, described by a single epithet—"infamous." Vehicles dilapidated, horses unbroken and frequently half-starved, drivers innocent of all knowledge of their profession—such were the ordinary incidents of locomotion in the Panjáb hackney-carriage, a mode of progression which might be said to combine, in a manner unprecedented even in India, the minimum of comfort and the maximum of danger. Added to which there were no authorized tables of fares, and no legal means available for promptly settling disputes.

The Municipal Committee of Lahore, the Cantonment Committee of Ambála and, doubtless, all other Municipal and Cantonment Committees concerned, were anxious to remedy so discreditable a state of things, and the first named Committee, some time ago, proposed bye-laws for effecting this desirable object; but it was held by high legal authority that, inasmuch as the Panjáb Municipal Act, IV of 1873, did not expressly empower Municipal Committees to make bye-laws for regulating hackney-carriage service, the proposed regulations were

ultra vires. In these circumstances the aid of the Legislature had to be invoked to obtain for the local authorities the necessary powers.

The Government of India admitted the necessity for legislation in the case of the Panjáb, but considered that the local extent of the measure might be appropriately enlarged, and its provisions made applicable to the municipalities and cantonments of all those Provinces of India which had no local Legislatures. It was, therefore, provided in the draft Bill that the law should have effect—at the option of the Local Governments concerned—not only in the Panjáb, but in the North-Western Provinces and Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 29th January, 1879.

CALCUTTA;
The 15th January, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 92 L. D.—15-9-80.—100.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 29th January, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.

His Excellency the Commander-in-Chief, G.C.B.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble Sir J. Strachey, K.C.S.I.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

Lieutenant-General the Hon'ble R. Strachey, R.E., C S.I., F.R.S.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble G. C. Paul.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

NEW MEMBER.

Lieutenant-General the Hon'ble SIR M. K. KENNEDY took his seat as an Additional Member.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON introduced the Bill for the regulation and control of Hackney-carriages in certain municipalities and cantonments, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Cockerell and Colvin, the Hon'ble Sayyad Ahmad Khán and the Mover. He said that the circumstances which had led to the introduction of the measure had been explained at the last meeting of the Council. Briefly stated, its object was to provide for the regulation, where necessary, of hackney-carriages in those Provinces and parts of India in which there were no local legislatures.

It was accordingly provided in the Bill, that the law should be applicable, if required, to the following localities; namely:—

(1) to municipalities situated in the territories known as the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg;

(2) to cantonments situated in those territories; and

(3) to British cantonments situated in the territories of Native Chiefs.

As to the mode of operation, it was proposed that the regulation of hackney-carriages, where effected, should be effected by local rules. These local rules would be made, in the case of municipalities, by the municipal committees, subject to confirmation by the Local Government; in the case of cantonments in British territory, by the Local Government, with the previous sanction of the Governor General in Council; in the case of British cantonments in the territories of Native States by the Governor General in Council.

The several matters to be dealt with by the rules were set forth in section 5 of the Bill. They might require, *inter alia*, that carriages offered for hire, and the animals and harness used with them, should be in proper condition; that fit persons should be employed as drivers; that the fares charged should be reasonable, and that the carriages should not be over-laden.

The Bill further provided that breach of rules should be punishable with fine extending to fifty rupees, and that disputes between the hirer and owner or driver of a carriage, as to amount of fare, should be determinable by a Magistrate.

The Motion was put and agreed to.

The Hon'ble Mr. Thornton also moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PLEADERS BILL.

The Hon'ble Mr. Stokes presented the preliminary Report of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865. He said that the Committee had made only two additions of any substantial importance. The first of these was the bringing of the practitioners

in the Presidency Small Cause Courts within the scope of the Pleaders Act. He had already explained that, owing to Sir Barnes Peacock's interpretation of the expression "Courts of Small Causes" as used in that Act, there was no power to make rules as to the qualification, admission and control of those practitioners; and the expediency of making such rules would (MR. STOKES supposed) be admitted by every one except, perhaps, some of the practitioners in question.

The second addition had been suggested by the Chief Justice of Bengal, for whose wise and kindly counsel, given on this and on many other occasions, MR. STOKES wished to express his hearty thanks. The addition was the giving power to make rules for the qualification, admission and control of mukhtárs practising on the Appellate side of the High Court. The present Act, XX of 1865, section 44, purported to give such a power, and it was clear that the intention of the legislature at that time was to oblige all persons who desired to practise either in the High Court or the Mufassal Courts as mukhtárs, to be duly admitted and enrolled as recognized officers of those Courts, and to place them under the Court's supervision and control.

Accordingly, under the power thus conferred upon them, the High Court at Fort William on the 19th of January, 1871, passed the following rules relating to mukhtárs in the High Court:—

"I. Persons who have hitherto practised as mukhtárs on the appellate side of the High Court, and also persons desiring so to practise, may apply to be admitted and enrolled as mukhtárs in the High Court.

"II. No person so applying shall be admitted, except he shall satisfy the Court as to his character and competency.

"III. Every person so applying, on being approved by the Court, shall, before he is admitted and enrolled as a mukhtár, be required to give security in the sum of Rs. 2,000 for his honesty and good conduct, for his compliance with the rules and orders of the High Court, and for the faithful discharge of his duties towards the Court and towards his employers.

"IV. Every person admitted and enrolled as a mukhtár of the High Court shall be at liberty—

(1) to instruct counsel or vakíl;

(2) to inspect the records of any civil or criminal case in which he is engaged as mukhtár, and if necessary to obtain copies of any papers or documents in order to the preparation of a brief or instructions for the counsel or vakíl employed, or to be employed, in the case;

(3) to deposit in the office money or securities on behalf of his clients;

(4) to withdraw monies or securities deposited on account of his clients;

(5) to receive back original or other documents filed in any case, after the case shall have been completely disposed of;

(6) and, generally, to do all other such duties on behalf of his clients as mukhtárs are now, according to the existing practice in the Court, empowered to do; provided that no monies, securities or documents shall be handed out to any mukhtár, except on production of a special or general power-of-attorney under the hand of his client, and duly registered, authorizing him to receive the same.

"V. Mukhtárs, within the first fortnight in January in every year, or on the occasion of taking out or renewing their certificates, shall be required to satisfy the Registrar as to the state of their securities."

Soon after this, on the 15th of April, 1872, the vakíls of the High Court presented a petition to the Judges, praying that the rules so made might be reconsidered, upon the ground that the introduction of a fourth class of practitioners, under the name of mukhtárs, into the High Court was injurious to the rights and privileges to which they (the vakíls) were entitled under the Letters Patent of 1862 and 1865, and the rules made by the High Court pursuant to those Letters Patent.

Their contention was, that the Letters Patent provided for only three classes of practitioners in the High Court, namely, advocates, vakíls and attornies; that clause 10 of the Letters Patent of 1862 contained a positive prohibition against any persons being allowed to act in any way for suitors in the High Court, except vakíls and attornies, and that section 44 of Act XX of 1865 was *ultra vires* of the Indian legislature, in so far as it contravened, or enabled the High Court to contravene, this prohibition. They insisted, therefore, that the introduction of a fourth class of practitioners to act in any way for clients in the High Court, under the name of mukhtárs, was contrary to law notwithstanding section 44 of the Act of 1865; and they prayed the Judges, upon those grounds, to rescind the rules of December, 1871.

This petition was opposed by a large number of persons, professing to be the mukhtárs of the High Court, who contended that they were, and had been for years past, acting for clients in that capacity, and that their status, as such, was recognized by the vakíls and the public, as well as by the Act of 1865.

The question thus raised was argued before the Judges; and, upon reconsideration, a majority of the Court were of opinion (no formal decision was given) that the rules which they had made in 1871 were contrary to law; and those rules were consequently rescinded.

MR. STOKES did not for a moment presume to question the correctness of the opinion of the High Court as the law then stood or was supposed to stand. But three days before Act XX of 1865 was passed, the Statute 28th Vic., c. 15, had been enacted by Parliament, and under it new Letters Patent were granted to the High Courts. The sixth section of the Statute expressly saved our legislative powers, and though clause 10 of the new Letters contained a prohibition like that in clause 10 of the former Letters, the 44th clause of the new Letters expressly declared that all the provisions of the Letters Patent (including, of course, the prohibition) were subject to the legislative powers of the Governor General in Council. Furthermore, owing to the full discussion which the authority of the Indian legislature had received in Meares' case, 14 Beng. 106, in Feda Husain's case, I. L. R. 1 Calc. 431, and in Bura and Bukh Singh's case, I. L. R. 3 Calc. 63, there could now be no reasonable doubt as to the extent of those powers.

The ground was therefore cleared. This legislature was fully competent to modify the Letters Patent and to enable the High Court to regulate the mukhtárs that practised on its appellate side. As to the expediency of so doing, there could be no question. "In order to the due protection of suitors (MR. STOKES quoted Sir R. Garth) from injustice and wrong, all persons, by whatever name they may be called—vakíls, mukhtárs, agents, or otherwise—who are allowed to take any part in the business of the Court, should have a defined and recognized position as the Court's officers, and should be bound by such wholesome rules as the Court should from time to time think fit to pass. In other words, it was highly desirable, in the interests of the public, that the intention of the legislature in 1865 with regard to High Court mukhtárs, as well as others, should be fully and fairly carried out." MR. STOKES had lived too long in India to be sanguine as to the complete success of any measure intended to stop an evil practice. But he did hope and believe that the rules which the High Court at Fort William, and also, he presumed, the High Court at Allahabad, would pass as soon as the Bill became law, would to some appreciable extent restrict the dishonest and demoralizing custom of giving commission on fees paid to legal practitioners.

Act XX of 1865 having been already thrice amended, the Committee had thought it better to repeal and consolidate, with the changes proposed by the Bill and those now described, than to have the law on so small a subject contained in five Acts.

The Council adjourned to Wednesday, the 12th February, 1879.

CALCUTTA;
The 29th January, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 550 L. D.—6-2-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 19th February, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

Lieutenant-General the Hon'ble Sir E. B. Johnson, K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES presented a further Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES also presented a further Report of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

Leave was granted.

CENTRAL PROVINCES EVIDENCE BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to make better provision for recording evidence in the Central Provinces and moved that it be taken into consideration. He said the Committee had considered the suggestion of the Home Department that the opportunity might be taken to empower the other Local Governments to extend the procedure provided by the Bill to the rest of British India. The Committee was not prepared without further enquiry to recommend that such a power should be given; the chief justification for the present measure was, that it embodied a practice which had prevailed in the Central Provinces for the last seventeen years, and which the local authorities were not prepared to abandon for the general rule prescribed by the Code of Civil Procedure.

The only objection which could reasonably be taken to the Bill was, that it had received the unqualified approval of the Local Government concerned, and that no suggestions had been made for its amendment. MR. STOKES did not say this ironically. He did not believe that he, or any one else, could draw a Bill of any complexity that would really deserve unqualified approval and require no change either in substance or form. He had now been engaged for twenty-five years in the study and practice of the art of legal expression, and in the interpretation of the work of masters of the craft like Sir Henry Thring; and he had been more and more impressed with the great and inherent difficulties of legislative draftsmanship and the truth of Austin's dictum, which he would take leave to read to the Council: "I will venture to affirm that what is commonly called the *technical* part of legislation is incomparably more difficult than what may be styled the *ethical*. In other words, it is far easier to conceive justly what would be useful law, than so to construct that same law that it may accomplish the design of the lawgiver." In India, moreover, these difficulties were enhanced by the practical impossibility of getting complete and perfectly accurate information as to the subject-matter and bearings of any proposed piece of legislation. In the present case, however, the matter of the Bill was extremely small and simple,

and he thought that, notwithstanding the regrettable absence of criticism, the Council might safely comply with the recommendation of the Committee, and let the Bill become law with all its presumable defects.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 26th February, 1879.

CALCUTTA;
The 19th February, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Wednesday, the 12th February, 1879, was adjourned to Wednesday, the 19th February, 1879.

Government Central Press.—No. 655 L. D.—21-2-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 26th February, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir J. Strachey, G.C.S.I.

General the Hon'ble Sir E. B. Johnson, K.C.B., C.I.E., R.A.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Náwáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

DESTRUCTION OF RECORDS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to authorize the destruction of Useless Records in Courts in British India.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India.

PRESIDENCY BANKS ACT, 1876, AMENDMENT BILL.

The Hon'ble SIR JOHN STRACHEY moved for leave to introduce a Bill to amend the Presidency Banks Act, 1876. He should explain in a very few

words the object of the little Bill which he asked leave to introduce. The Presidency Banks Act had now been in force nearly three years, and had worked, so far as the Government was informed, in a very satisfactory manner. The object of the Bill he proposed to introduce was not to alter any of the substantive provisions of the existing Act, but only to provide for a few omissions and improvements in detail which had been suggested. Amongst these proposed changes, the only change which had any real importance had been suggested by the Banks themselves, and it was with the object of meeting the wishes of the Presidency Banks that he now asked leave to introduce this Bill. Its necessity had mainly arisen from doubts which had been expressed as to whether the Banks had power, under the Act of 1876, to borrow money by pledging the assets or property of the Bank. The need for such a power was obvious; and this omission having been brought to the notice of the Government by the three Presidency Banks, it was with the object of removing these doubts that it was proposed to introduce the present Bill.

The other changes which it was proposed to take the opportunity of making in the existing law were for the most part so unimportant, that he need not take up the time of the Council in explaining them.

The Hon'ble MR. HOPE said he heard with great satisfaction that it was proposed to amend the Presidency Banks Act. He was not aware of the exact nature of the amendments proposed; but he felt at the time the Act was being passed, and when he sat as a Member of the Select Committee, that it was in many points very incomplete. He trusted that the amendment the Act would receive would not only affect matters of detail, but that its general tendency would be to increase the security of the public and the shareholders of the Bank. The present Act was still in many respects defective, and the very serious malpractices which had come to light both in India and in England showed that a much greater amount of stringency than had hitherto been considered necessary, was desirable in all Acts of this description.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th March, 1879.

CALCUTTA;
The 26th February, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Exd.—J. G.

Govt. Central Press.—No 708 L. D.—28-2-79.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 5th March, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir J. Strachey, G.C.S.I.

General the Hon'ble Sir E. B. Johnson, K.C.B., C.I.E., R.A.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

DESTRUCTION OF RECORDS BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to authorize the destruction of Useless Records in Courts in British India be taken into consideration. He said that the only important change the Committee had made in the Bill was by extending its provisions to records, books and papers kept in Revenue-offices (which in many parts of British India were judicial tribunals), and to the records of the Administrator General.

The Committee had conferred the power to make rules for the destruction of the former records on the Chief Revenue Authority, and that of making rules for the destruction of the latter on the High Court. In each case the rules would require the sanction of Government.

There were some minor amendments which he need not mention as they were all enumerated in the report.

The Hon'ble MR. HOPE moved that the Bill be referred back to the Select Committee for consideration as to whether it should not comprise (whether by direction for including in the Rules, or otherwise) provision to ensure the preservation of important records for certain periods, the early return to the parties, where practicable, of documents put in evidence, and the giving of due notice before the destruction of such records and documents.

He said that at first sight it might appear that the subject of this Bill was a very trivial one, and that the mode in which it was proposed to deal with useless records was amply sufficient, namely, that their destruction should be regulated by rules made by the High Courts, and approved, in certain cases, by the Local Governments, and, so far as they related to Bengal, by the Governor General in Council. The Council need, however, only look as far as the Bill itself in order to see that a certain amount of importance attached to the subject. It appeared that the very basis of the Bill, the ground upon which it was required at all, was that legislation was necessary in order to authorize the destruction of the property of other people; and the end which the Bill would secure was that the Government would be protected from suits by private parties on account of anything they might do with regard to that property. That, he thought, was a very important fact, and such great power and great immunity ought not to be conferred except under suitable precautions and restrictions. The mode in which it was proposed to deal with the matter was to give a power of making Rules to the High Courts, subject to certain control provided in the Bill, which was pretty much the system which prevailed at present. It therefore seemed necessary, first, to look into the working of the present system. Now, he had unfortunately some considerable experience as an actual litigant in the Civil Courts, and also the experience which he might possess in common with all the administrative officers in the country; and he had seen and heard from time to time many objections to the method which was followed in the destruction of records. In the first place, there was a great tendency in the Courts to absorb documents; for one reason or another original title-deeds, agreements, accounts and other such documents were drawn into the Courts. It was true that there was a provision in the Civil Procedure Code by which a party, under certain circumstances, could get back a document from the

Court by putting in a copy, but in practice, for a variety of reasons, that provision was very little resorted to. It often happened that the real point in the case turned upon the hand-writing or signature to a document, or on whether it was or was not forged. Therefore, in a variety of cases, documents could not practically be so got back by the people by whom they were deposited in Court. And when the time came when the document might be given back, there were other practical difficulties to be encountered. The Court had to be petitioned, and in doing so a certain amount of expense had to be incurred. The Court had then to order a search for the document, and sometimes it could not be found, or was reported to be eaten up by white ants. In short, when once a document was in Court, it was uncommonly difficult to get it out. Furthermore, when a man, on perfectly reasonable grounds, believed that his document was safe in the custody of the Court, and left it so, he might on enquiry be told that it had been destroyed as a useless record. Such, MR. HOPE said, had been his own experience, and with regard to some other Provinces in India, the enquiries he had made of competent persons corroborated it, and shewed that the practice of documents being kept in Court and destroyed unnecessarily prevailed there also, and had been known to result in considerable expense and inconvenience.

However, if they wished to see how the present powers, which the Bill proposed to legalize, were likely to be used, they should look to the present rules of the Courts, which were the best guide to see whether the proposed legislation was wise. He had had considerable difficulty in getting hold of even some of them. When he applied for them some time ago, they were not to be had in the Legislative Department at all, and the Select Committee itself, if he was rightly informed, had not thought it necessary to take the trouble to look into them. However that might be, by hook or by crook he had at last managed to get hold of the rules of four of the different Courts in India. He did not wish to go into any detailed criticism of these four sets of rules, not only because it might be invidious to do so, but because a general statement would, he hoped, suffice for his purpose. Under these rules the destruction of useless records was provided for in very diverse ways; and he might safely say that if the provisions in some of the rules were not utterly superfluous, then provisions in others were utterly insufficient. He did not wish to trouble the Council with any great detail unless it proved necessary to do so. He thought his purpose would be insured by inviting attention to the three objects which his motion comprised, and for which, as it seemed to him, either the Act, or the rules to be made under the Act, should make definite provision. The Act need not go into detail, but might well require that the rules should provide *inter alia* for these three things. First, "the preservation of important records for certain periods."

By that he meant that records of a certain class of cases should be kept so many years, and of other classes of cases for longer or shorter periods, and of certain cases in perpetuity. Secondly, "the early return to the parties, where practicable, of documents put in evidence;" and thirdly, "the giving of due notice before the destruction of such records and documents," by which he meant, the giving notice, as far as practicable, to parties who had put valuable papers into Court. As a matter of fact, he found that nearly the whole of what he wished to see provided in the rules relating to all parts of India was provided, although not very clearly and completely, in the rules of the Calcutta High Court. Therefore, what he asked was nothing more than what some of the judicial authorities had found perfectly reasonable, although others had not done so. The reason why he did not make a definite motion that such and such words be inserted in the Bill was that these matters were better discussed quietly in Committee, and the exact wording could be best settled then. If his motion were carried, he would then, with the concurrence of the Law Member and the other gentlemen on the Committee, propose to add two or three members to the Committee, including himself, so as to give him an opportunity of stating his views. The mode by which he proposed to meet the object he had in view was one common in our Acts, namely, to say that the rules under the Act should provide for such and such main points. Practically, it would thus be seen that his request might be summed up as a petition for time and consideration, and in that light it did not appear to him to be unreasonable. He trusted, considering the desire which the Hon'ble Mover had always evinced to have his drafts rendered as complete as possible, that he would not withhold his support from the motion now before the Council.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that he endorsed generally the views expressed by his hon'ble friend to his left. The MAHÁRÁJÁ could speak from personal experience that the facilities for taking back documents filed in Courts were not such as could be desired, and instances were not unknown in which, in the over-anxiousness to clear the record-room, important documents had been destroyed along with useless records. Too much precaution, he thought, could not be taken to prevent such proceedings. The object aimed at by the Hon'ble Member was certainly a good one and deserved consideration; but he (THE MAHÁRÁJÁ) confessed he was not prepared to offer any suggestion for the attainment of that object. He believed it could not be expected that the legislature should lay down any hard and fast rules for the purpose; but he submitted the Select Committee might well be requested to consider whether certain principles, on the basis of

which the local authorities should frame their rules, could not be embodied in the Act, with a view to preserve important documents from destruction. Such a course, it seemed to him, would have the additional advantage of securing a sort of uniformity in the rules, which he thought was desirable but which could not be obtained if their framing were left entirely to the discretion of the local authorities. For these reasons, he begged to give his support to the motion now before the Council.

The Hon'ble SIR MUHAMMAD FAIZ ALÍ KHÁN said he entirely concurred with the remarks which had been made by the Hon'ble Member who had just spoken.

The Hon'ble MR. COCKERELL said that, as a Member of the Select Committee to which this Bill was referred, he desired to submit to the Council that the course suggested in this motion was wholly unnecessary. The Bill was designed simply to give legal authorization to the practice which, in regard to the large majority of judicial records, had been in force in some parts of the Empire at least for about half a century; he drew attention to this fact as in itself suggesting a sufficient comment on the allegation that had been made as to the Government seeking immunity through this Bill from the legal consequences of dealing with private property: For although there had been no express legal authority for the destruction of any records or documents, he had never heard of a single instance of suits being brought against the Government for damage accruing to any individual through the practice which this Bill was to legalize; and he did not believe that it could be justly affirmed that the practice in question had worked injuriously to public or private interests.

Hitherto, except in the Bombay Presidency and Sindh, and quite recently also in Oudh and the Central Provinces, there had been no express enactment on this subject, and it was, he believed, open to doubt whether any statutory power was needed to effect all that was required as regarded the large mass of records and documents; for public records might be held to be the property of the State, and property in private documents deposited in Courts and public offices, it might be reasonably argued, became vested in the State, if after repeated notice the former owners persistently neglected to withdraw them.

The Bill, so far from giving any additional power to the High Courts to that which they had heretofore exercised in regard to this matter, imposed this important restriction, that the rules to be framed by them must obtain the sanction of Government, and then be published in the usual way before they could be acted upon.

But the Hon'ble mover of the amendment now before the Council was not satisfied with the degree of security to public and private interests to be obtained from these provisions, and thought, apparently, that the power of making rules for the destruction of records should be conferred only subject to certain conditions and qualifications as to the contents of such rules, for the due preservation of important papers, and due previous notice to parties affected by the contemplated destruction of any records or private documents.

The Bengal rules, under which papers were destroyed, now in force, contained the very conditions on both these points, which the Hon'ble mover would impose by express enactment; and having regard to this fact, the Committee considered it inexpedient to attach to the power of making rules conditions, the obligatory principle of which had been fully recognized in the spontaneous action of the Courts themselves.

For whilst, on the one hand, nothing was gained by enforcing in an enactment obligations which were already admitted and acted up to, there was, on the other hand, this objection to such a course, that by its adoption you did positive harm, inasmuch as you thereby weakened the sense of responsibility under which the discretionary power conferred on the Courts was to be exercised; for it was impossible to forecast such an exhaustive list of the necessary conditions and qualifications, as would dispense with the need for the exercise of discretion in any case or circumstances.

In providing that the rules to be made must meet with the approval of the Government, he submitted that all that was necessary or desirable had been done in the Bill as it now stood.

As regarded the suggested provision to be made in this Bill for ensuring the early return to their owners of documents put in evidence, he confessed his inability to see any connection between such a provision and the Bill under discussion, which dealt only with the destruction of records which had become useless.

Acts which dealt with the production of private documents—such, for instance, as the Civil Procedure Code, the Registration and Stamp Acts—contained in themselves proper provision for the due return of all such documents, and if this were not so, the proper place for the needed remedy would be in those enactments and not in the present Bill. The suggestion that some provision of this kind was needed, proceeded of course on the hypothesis that documents produced in evidence were unnecessarily detained, and that their owners did experience difficulty in their recovery. But was it really the case that such a

state of things existed at the present time? In the first place, he would remark that, under the law of procedure, as it now stood, original documents were not required to be filed with the record of any suit or proceeding; they had to be produced at the hearing of a case, and might then be withdrawn by their owners on copies being furnished by the latter for filing with the record. He might venture to say also, with some confidence in regard to this part of India at least, that no such difficulty in the way of the early return of private documents, as was apparently supposed to be felt, really existed. The true difficulty in regard to the return of documents, when they had been filed here, was precisely in the opposite direction, that was to say, the tendency of the owners of such documents was to leave them where they were, and often considerable pressure was required to induce such persons to withdraw them. So much was this found to be the case in regard to documents brought for registration, that it was found necessary to give power in the Registration Acts, to destroy all documents not reclaimed within two years from the date of their deposit.

For these reasons, he was of opinion that the proposal contained in the motion now before the Council should be rejected.

The Hon'ble MR. THORNTON said that, after the speech of his hon'ble friend on the right (Mr. Cockerell), he had little to say except to express general concurrence in the remarks made by him. He (MR. THORNTON) did not think that the Imperial legislature was in a position to issue directions as to the nature of the documents to be preserved, and the time during which they should be preserved, in the Courts and Revenue-offices throughout British India. These were matters which the local authorities, that is to say, the Judges of the High Courts and the Local Governments, were far better able to deal with than this Council—because they were matters which greatly depended, even as regarded general principles, upon local considerations. For example, in localities where there was an elaborate system of survey, settlement, record and registration of titles, the preservation of old and unclaimed documents relating to land was a matter rather of sentimental than serious interest; on the other hand, in localities where there had been no survey or registration of titles, the preservation of such documents was a matter of serious importance. So with regard to the time during which documents should be preserved. This would vary greatly according to the state of land-registration and other local peculiarities. In these circumstances, he did not think the time of the Council would be usefully occupied in attempting to frame rules or lay down principles suited to the varied circumstances and differing conditions of the several Local Governments and Administrations. Another of the Hon'ble Mr. Hope's

proposals seemed open to still greater objection. It was the proposal that provision should be made for the early return to the parties of documents put in evidence. The law (section 144 of the Code of Civil Procedure) already made ample provision for the return of documents filed by parties to a suit. Any dilatoriness on the part of Judges in carrying out those provisions was a defect, not in the law, but in the working of the law, and the proper remedy rested, not with the legislature, but with the executive; if the Bombay Judges were guilty of the delays imputed to them, so much the worse for the Bombay Judges; but it was not the fault of the law, and was no ground for legislative, though it might be for executive, action.

But though he was not in favour of the legislature attempting to lay down even general rules on the subject, there was nothing, he would observe, to prevent the Government of India, in the Home Department, exercising general supervision and calling the attention of Local Governments from time to time to observed defects in local rules for the destruction of records, and he felt sure that defects so pointed out would, if practicable, be at once remedied.

His Honour THE LIEUTENANT-GOVERNOR did not propose to support the amendment. At the same time, he felt that the objections raised to the Bill as it now stood were not altogether unreasonable. There did seem a want of great security that the interests of suitors filing documents should be attended to in the preparation of rules under the Act. It was, however, no doubt an unusual course to adopt to refer the Bill back to the Select Committee, and, on the whole, he thought the suggestion made by the Hon'ble Member who had just spoken would meet the object in view, namely, that the Government should undertake to draw the attention of the Local Governments to the points which had been noticed, and give them special instructions in framing rules to take all the precautions that might be necessary. HIS HONOUR thought that, if the Hon'ble gentleman and some of the other members who had just spoken, and who were practically acquainted with these questions, had been put upon the Committee, this discussion would not have arisen. The Select Committee appeared to him too small; and he hoped that in Bills of this sort, affecting the people at large, care would in future be taken to add to the Select Committee gentlemen acquainted with the practical working of the Administration.

The Hon'ble MR. THORNTON observed that, though he was not a Member of the Select Committee, he was invited to sit with the Committee and was in all respects treated as a Member, and he bore a full share of the responsibility which devolved upon the Committee in the consideration and settlement of the Bill.

The Hon'ble MR. STOKES said that he had been about to explain, in reference to His Honour's remarks, that the Hon'ble Mr. Thornton, though not formally, was substantially, a member of the Select Committee, whose meeting he had attended at MR. STOKES' request, and in the deliberations of which he had greatly aided.

The Hon'ble Mr. Hope's motion suggested three amendments of the Bill, of which the first would be impracticable, the second would be incongruous, and the third, if practicable, would be useless. The first—that the Bill should insure the preservation of important records for certain periods—would be impracticable, because, so great was the diversity of practice as to the files into which civil records were divided, so serious was the difference of local circumstances—as, for example, the size of the record-rooms, and the time in which they became filled—so various were the laws under which proceedings took place in the Courts and Revenue-offices of British India, that no two High Courts, no two Local Governments, no two Revenue-Authorities and, he thought he might add, no two members of a Select Committee, would ever agree as to what should be deemed "important records" and what periods should be fixed for their preservation. This assertion was not without basis. Before the report was presented, he had studied the rules for the destruction of records respectively prepared by two of the superior Courts—the High Court at Fort William and the Chief Court of the Panjáb; and he came to the conclusion that it would be impossible to make anything like a complete list of documents to be preserved in perpetuity or for any given term which would be accepted by each Court as satisfactory. He had not seen the rules issued by the Madras and Bombay High Courts; they were in the hands of Mr. Hope; but the Secretary had been informed by that Hon'ble gentleman that they presented startling contrasts to the rules issued at Calcutta and Lahore. So far from these long-standing discrepancies being regrettable, they seemed to MR. STOKES to show that each set of rules was adapted to its special environment, and therefore more likely to succeed in the struggle for existence than any general regulations which they could possibly frame in Committee for this congeries of countries called British India.

The Bill, in abstaining from detailed specification of documents, followed the precedent set not only by this Council in the Central Provinces Laws Act, but also by the Bombay legislature in the Acts mentioned in the schedule to the Bill. But the Bill improved on former legislation by requiring the approval of two Authorities to each set of rules—that was to say, the High Court and the Government of India, or the High Court and the Local Government, or the Chief Controlling Revenue-Authority and the Local Government. On the

whole, he trusted that the Council would agree with him in thinking that those high Authorities were far better suited to regulate such a matter than any Committee of this Council would be, and that tribunals entrusted by law with almost unlimited power over our lives, liberty and most valuable property, might safely be relied on to make rules as to the trumpery documents with which this Bill proposed to deal. He would conclude what he had to say on this part of the subject by quoting what one of their ablest and most experienced Judges (Mr. Justice Innes of the Madras High Court) had written on the Bill:

"I think the proposed Act is a very good one, as it leaves a proper discretion to do all that is required by rules to be framed by the Authorities best capable of judging what is wanted."

The second amendment suggested by the Honourable Member would, as he had said, be incongruous. Mr. Hope proposed that the Bill should provide for the early return to the parties of documents put in evidence. But such a provision would obviously be out of place in a little Act dealing with the destruction of useless records. It was matter for the Codes of Procedure, and there it was already sufficiently provided for. The Hon'ble gentleman appeared to forget that it was not necessary for the parties to civil suits to file original documents. Copies could be filed and the originals need only be produced at the trial. Their detention in Court, unless, indeed, they were impounded, was not, as Mr. Cockerell had pointed out, required by the law. They could be got back by substituting certified copies. This was all set forth in the Code of Civil Procedure, sections 59, 62, 143, 144. So the Code of Criminal Procedure, section 367, provided for the return, at the conclusion of the proceedings, of documents produced before criminal Courts and not impounded.

The third proposed amendment, as to giving due notice before destruction of records and documents, would, as he had said, if it were practicable, be useless. How and where was such a notice to be given? Was it to be published in the Gazette, or by proclamation, or served on every person concerned? To have any conceivable effect, such a notice must contain a complete list of all the records and documents proposed to be destroyed, and any one who had seen, as he had, even one Bengáli *nathi*, would know that the preparation of such a list would be impracticable with the limited official staff and funds at the disposal of the Judicial and Revenue Authorities. But furthermore, the notice, if it were practicable, would be of no earthly use; for no one would read this list. Moreover, as he had explained, no one need leave an original document in Court. Whoever did so must, therefore, be held to care little or nothing about the document so left, and formal notice to him after a long lapse of years

that this document, worthless in his eyes, was about to be burnt or turned into pulp if he did not remove it, would certainly be treated with the polite contempt which he believed the Natives of this country sometimes expressed for certain points in our over-elaborate system of administration.

For these reasons, he opposed this motion, and speaking for himself—his Hon'ble colleague Mr. Cockerell had spoken for himself with no uncertain sound—if the motion were carried and the Bill referred back to the Select Committee, he saw no chance of their altering their opinion.

The Hon'ble SIR ALEXANDER ARBUTHNOT was not prepared to say that he agreed with every word that had been uttered in the course of the debate in opposition to the amendment moved by the Hon'ble Member, but he might say that in everything that had been said by his hon'ble friend Mr. Cockerell he entirely concurred. It would be useless for him to advert to the various arguments which had been adduced against the amendment. But one remark he might be permitted to make, and that was that the appeal which had been made by his Hon'ble colleague Mr. Hope to the general experience of those who were engaged in the administration of the country, was in no way supported by the communications which had been addressed to the Government of India with reference to this Bill. They had before them reports from the Government of Bengal and the High Court at Calcutta, from the Chief Commissioner of British Burma, the Government of Madras, the Chief Commissioner of Assam, the Lieutenant-Governor of the Panjáb, the Chief Commissioners of Ajmer and the Central Provinces, the Government of Bombay, the Government of the North-Western Provinces, the Chief Commissioner of Mysore, and the Residents of Haidarábád and Baroda. In not one of these communications was a word said, that would lead SIR ALEXANDER ARBUTHNOT to the conclusion that the precautions which his Hon'ble colleague deemed to be necessary, ought to be taken by this Council. He (SIR ALEXANDER ARBUTHNOT), perhaps, need say but little as to that part of the motion which provided for the early return of documents to the parties; but he could not help being struck by some of his Hon'ble colleague's remarks on this point. His Hon'ble colleague alleged that it often happened that documents could not be got back, that documents could not be found, and that, not unfrequently, they were eaten up by white ants. It appeared to SIR ALEXANDER ARBUTHNOT that none of these contingencies were contingencies against which this Council could effectively provide. What his Hon'ble colleague Mr. Thornton had said on that part of the amendment appeared to him quite convincing. But in his opinion it was not to be regretted that this debate had taken place, and he should be very

glad if the proceedings of this Council were more often characterised by discussion and debate.

With reference to the suggestion which had been made by His Honour the Lieutenant-Governor of Bengal, he thought he might say, on the part of the Government of India, that the Executive Government would be careful to draw the attention of the various Authorities concerned, to the allegations which had been made, and to the arguments which had been used, in the course of this debate, and would direct their serious attention to the necessity of so framing the rules as to prevent, as far as might be possible, any of the evils against which this amendment was directed, occurring in their respective territories.

The Hon'ble MR. HOPE said he felt himself in a position of some difficulty, between his desire not to take up the time of the Council, and his inclination to point out the very obvious answers which existed to almost every one of the objections which had been advanced; and if, in his desire to be merciful to the Council, he failed to be just to the cause of the people, which he believed himself to be serving, he should no doubt be somewhat to blame. He did not wish to take up time with captious objections; but he would demur, first of all, to the statements which had been made by the Hon'ble Mr. Cockerell, who was a Member of the Select Committee on the Bill. First, he understood the Hon'ble Member to say that all that was at present contemplated was to stereotype the practice which had existed in Bengal for half a century, without a single suit being instituted against Government for the loss of a document which had been destroyed. That might be taken in two ways. If MR. HOPE was to understand that the Hon'ble Member approved of the rules passed by the High Court, and that those rules had acted so well, then those rules contained, and this Bill did not, all the safe-guards which he was anxious to see provided. And he might add, with reference to the remarks which fell from Sir Alexander Arbuthnot, who said that he had carefully looked through the papers and had found nothing therein which showed the necessity for this amendment, that he, to a certain extent, had taken the idea of a part of his amendment from the papers which were received from Bengal and printed as No. 9. Mr. Field, in a very able report on the subject, mentioned that in all the rules from the earliest times—in 1833, in 1852 and in 1865—provision had been made for the return of documents to the parties to whom they belonged, and that the rules of 1852 required the preservation of original documents filed by the parties.

So, if it was the system prevailing in Bengal which the Hon'ble Member wished to stereotype, then it was clear that MR. HOPE's view was in accord with that of the Hon'ble Member. But if the system he desired to con-

firm was that shewn by all the rules as they were found in other places, then MR. HOPE demurred to the propriety of stereotyping rules such as those he found laid down by the Madras High Court. These rules occupied only half a page, and it was there said that, excepting judgments and decrees of the Civil Courts, and any documents which the Judge, for special reasons, might order to be preserved, all records, including documents put in by parties as exhibits, were to be destroyed after three years! Now, was it the system in Madras or that in Bengal, or the general want of system, which the Hon'ble Member desired to stereotype?

Another point which had been dwelt upon by more than one Hon'ble Member was, that the rules would not be acted upon until they had been sanctioned, and His Honour the Lieutenant-Governor supported Mr. Thornton's suggestion, which MR. HOPE admitted was an exceedingly good one, that the Home Department should draw the attention of the Local Governments to the desirability of providing in the rules for the objects MR. HOPE desired. But as to that MR. HOPE would point out that, according to the present Bill, it did not follow that there were going to be any new rules at all. The Bill merely said that the Court might, from time to time, make rules, and section 6 of the Bill provided that the rules now in force should continue and have the force of law until they were rescinded. Therefore, it did not follow that there would be any new rules passed in consequence of the passing of this Bill; and therefore the effect of the suggestion would at best be that the next time any rules were revised, these matters would be taken into consideration. Further, some of these rules were made by the High Courts, and he did not know whether the High Courts would altogether relish receiving a letter from the Home Department pointing out what was desirable. Again, if it was desirable to put such directions into a letter, why might not they be sufficiently sifted to be put in the shape of directions in broad terms into the Act? Again, the Hon'ble Mr. Cockerell had remarked that what MR. HOPE wanted was to impose restrictions which had already been recognized as obligatory But what MR. HOPE had said in regard to the rules in force in the Madras Presidency distinctly showed that the restrictions he desired were *not* held to be obligatory there.

Another point was one which had been dwelt upon by the Hon'ble Mr. Thornton and other Hon'ble Members, but with reference to which MR. HOPE must point out that the scope of his amendment had been entirely misunderstood. The Hon'ble Member had pointed out that it would not be possible, on account of the varying circumstances and advancement of different Provinces of India, to prescribe in the Act the nature of the documents which should be preserved and the time after which they might be destroyed. But

MR. HOPE'S amendment did not contain anything which could bear such a construction. All that he contended for was that each Court should in the Rules prescribe, amongst other things, periods for the destruction of records in proportion to the importance of the documents. Therefore, everything that had been said by Hon'ble Members on this point might be held to have been unintentionally irrelevant.

With reference to the epigrammatic summary by the Hon'ble the Law Member, of the amendments which MR. HOPE had proposed, that the first of them was impracticable, the second incongruous, and the third, if it were practicable, would be useless, he would remark that epigrams were somewhat dangerous things, and he was afraid that epigrams of that sort would seldom bear scrutiny. He might take up the time of the Council by replying in the same style; but he would only say that to him it seemed that such of the Hon'ble Law Member's remarks as were not irrelevant were erroneous. The first objection, that the amendment was "impracticable," was founded upon a totally mistaken construction of it, namely, that it contemplated that the Act should specify in every case beforehand what sorts of documents should be preserved and what should not; and that there should be a uniform system of rules throughout India. But for this MR. HOPE did not contend, and such a contention, it would be seen, would not be in accord with the manner in which the entire Bill had been drafted. All that he wished was to secure that the rules should provide for the preservation of documents for suitable periods. He regretted to hear that, by the Hon'ble Member, all those records which contained valuable evidence, accounts and deeds, were designated as "trumpery documents." That was the key-note of the Hon'ble Law Member's treatment of the Bill, and though it would seem to be also the view which the High Court of Madras entertained, he must altogether repudiate it.

With reference to the objection made by one Hon'ble Member, and which finally came from the Hon'ble Mover of the Bill, in the form that the second part of MR. HOPE'S motion was "incongruous," inasmuch as it related to the early return of documents put in evidence, and the explanation that it was incongruous because the law already provided that documents filed in Court should be given back to the parties, he must point out that that was an error apparently arising from a too superficial consideration of the requirements of the law. The upshot of the sections of the Civil Procedure Code to which reference had been made (59, 62, and 143-4) was, that a person should ordinarily be entitled to the return of his document when he asked for it. But what was provided in the Bengal rules was, that to every copy of a decree given to the parties to a suit a printed notice

should be attached, calling upon them to remove their documentary evidence as soon as the decree became final; and again, that at another stage notice should, wherever practicable, be given to the person or persons on whose behalf any documents were brought into Court, calling on them to take them back into their own keeping within six months,—thus giving the owners of documents in Court a fair warning, which they would neglect at their peril.

The third objection was that, if the measure proposed were not impracticable, it was useless. MR. HOPE submitted that it was neither the one nor the other. If it was impracticable, he should like to have explanation as to how analogous provisions came to exist in the rules of the Bengal High Court, and to have worked, according to the Hon'ble Mr. Cockerell, satisfactorily for nearly half a century, and to have been re-enacted in the new set of rules in July, 1877. The rules provided that notice to withdraw their documents should, wherever practicable, be given to the parties both at the time of decree and on a subsequent occasion, that certain records should be preserved for various periods of time, and that certain documents should be preserved even though not taken away. If that was not practicable, then the Bengal High Court had put very foolish provisions in their recent rules. If it was, then the supposition of the Hon'ble Law Member that no staff of clerks would be able to carry out MR. HOPE'S proposal, and that notices could not be issued, was opposed to the facts. As to the assertion that MR. HOPE'S views were not corroborated by the general experience of the country, he would remind the Council that he had already pointed out that such corroboration did exist in some of the papers, and would also observe that in the reports received on Bills, it did not often occur that the Council got remarks from all quarters upon specific points unless attention had actually been drawn to them and opinions had been required. If a circular were now to go to the Local Governments asking if they considered, on the whole, that provision should be made in the rules under the Act for securing the early return of documents put in evidence and the giving of due notice before the destruction of important records and documents, he believed that five out of six of them would think it very reasonable that such provision should be made.

In conclusion, he would submit that he had, he believed, given effectual answers to the whole of the objections which had been made. The argument against his motion amounted to this, that the interests of suitors were already sufficiently protected by the existing system. If so, he did not see why they should legislate at all in the matter. What he urged was, that if they were going to make a law, they must sufficiently protect the interests of those who would be affected by it. He would remind the Council that his motion was

simply for time and for the re-consideration of the Bill with the assistance of a Committee larger than the present one, the smallness of which had been so suitably commented upon by His Honour the Lieutenant-Governor. If after the Committee had obtained copies of all the rules in force in the different Provinces and looked at them, and had asked the Local Governments if they thought the provisions suggested by his motion were desirable or otherwise, the Committee should come to the conclusion that no amendment in the Bill was necessary, he should be perfectly satisfied. There was no urgency for the passing of the Bill, and there was nothing which made it necessary that his plea for time for further consideration should be denied.

When he was referring to the rules of the Madras High Court, he had accidentally omitted to mention that he had also consulted the Panjáb rules. They were generally good rules compared with some others, but were open to exception. For instance: it was first provided in Rule 12 that the file A in all civil suits for immoveable property should be preserved in perpetuity. But that was governed by a later rule which said that, when the record-room was over-crowded, the Deputy Commissioner might, with the sanction of the Commissioner, order the destruction of "all records of suits for or relating to rights in immoveable property which had been decided for twenty years and upwards." What then would be the position of an unfortunate man who, relying upon Rule 12, and believing that under it certain important papers relating to his property were safe and to be preserved, left them there rather than make an application for the return of them which might be opposed by his other sharers in the land, but who, when he did apply to the Court for them in some emergency, was told that the papers had been burnt five or six years previously, as there was no space for them in the record-room? It was true that, in such cases, an abstract of the property and right concerned, and the final order, were preserved; but, having proper regard to the protection of property, he thought that no such abstract or final order of a Court would compensate for the loss of an original document giving a title to land. The Panjáb rules contained no provision at all for notice or return of documents to parties, and he would conclude by offering them as an illustration of his case.

His Excellency THE PRESIDENT said that the amendment appeared to him in its main character to be undesirable, nor was it desirable in the real interests of the owners of documents which had been put in evidence. He did not think that that view had been disputed by any Hon'ble Member, and it did not seem to him that the Hon'ble Member had shown that the identical rule was practicable in all parts of India, or that directions in support of that object should properly be the result of legislative enactment instead of executive orders.

Although he sympathized with the object of the amendment, he did not feel in a position to support it. He therefore opposed the motion.

The amendment was put and negatived.

The Hon'ble MR. STOKES' motion was then put and agreed to.

The Hon'ble MR. HOPE moved that the following words be omitted :—

In the Preamble, "and Revenue-offices."

In section 4, "and offices."

In section 6, "or Revenue-office."

The inclusion of these words, as far as he was able to make out, was owing to some remarks which fell from the Hon'ble Mr. Thornton on the 16th October last. He said—

"If legislative sanction was really necessary to authorize the destruction of public records on the ground that, amongst those records, there were documents which were private property, why should the scope and operation of the present Bill be confined to judicial records only? Why should not its operation be extended so as to embrace the records of other departments of the Government? The records of the Revenue, Settlement, Police and other departments were very voluminous."

There was also an allusion to the matter in a letter from the Government of the Panjáb and in a letter from the Government of Bengal ; but whether the Bengal Government supported the proposal or not, MR. HOPE thought was not exactly clear. It appeared to him that, before making this important addition to the Bill, all the Local Governments should be consulted, because, adopting the argument recently used in the other case, the circumstances of suits and the nature of the work under different Governments were so various, that legislation which might be exceedingly desirable in one Province, might be totally undesirable in another. What might be the force of that objection, he left others to consider. But he would ask, in the first place, what were "revenue-records?" If they were the records and letters of the Collector, he, as the head of the district, was corresponding perpetually on every kind of subject. His records and letters were all filed and kept together, and it would not be possible for a letter relating to the settlement of land-revenue and a paper relating to any ordinary matter, to be treated differently. But besides considering the circumstances and varying conditions of different parts of India, the words "Revenue-office" were totally unsuitable. But again why "Revenue-offices" only? Why not Police and other offices?

Why select Revenue-offices in particular? Why not include the Secretariat offices? The reason for legislation given was that the papers in Revenue-offices sometimes included private documents. Did all valuable documents of private persons always stick with the Collector and never come to the Government of India or the Local Governments? If all the other public departments were not included, the provision would be an imperfect provision, which would not answer the ends it was intended to meet. MR. HOPE would put aside the question, which had been mentioned in a letter from a Bengal officer, Mr. Field, as to whether it was necessary to have legislation, a question which the Hon'ble Mr. Cockerell also seemed doubtful about. Leaving that aside, MR. HOPE would say that such documents were exceedingly rare as compared with the mass of other records, and he thought that greater care would be taken of them if they were left as they were than if destruction of them were legalised. But private documents were by no means the most important documents. All manner of reports and accounts of the early history of the country from the time of Sir John Malcolm were amongst the records of Revenue-offices. It was only the Local Government which could judge how far these papers could be destroyed, and it would be very much safer to leave the matter to the discretion of the heads of Departments themselves, than to have formal rules rigidly acted on with the force of law. In short, it seemed to MR. HOPE that when they proceeded to legislate as to particular correspondence, they were over-legislating. It might be reasonable to legislate for the records of Courts, but not as to the correspondence of ordinary offices. It might next be a question whether they should not legislate in regard to their own private correspondence, so that no man should keep a document belonging to another person without the permission of the State. He therefore held that Revenue-offices should not be included in the Bill,—in the first place, because the matter could not be properly provided for by legal rules; secondly, because legislation was unnecessary, and thirdly, on the ground that we should avoid over-legislation.

The Hon'ble MR. THORNTON said that his hon'ble friend's amendment was based upon two objections which appeared somewhat inconsistent one with another; one being that the provisions of the Bill were too extensive, and the other that they were not extensive enough. As for the first objection, that is to say, that no case had been made out for the extension of the Act to Revenue-offices, he would explain that, as rules for the destruction of records in Revenue-offices already existed—at any rate he could vouch for the fact of their existence in one Province—it was thought desirable to include these offices within the scope of the enactment. But it would be observed that the Act was permissive in its character, and that if in any locality no rules were required to regulate the destruction of useless documents in Revenue-offices, they need

not be made. As for the second objection, namely, that, if the provisions of the Act were made applicable to Revenue-offices, they should be made applicable to all Government offices, he would remark that the argument was theoretically plausible; but there was a difference between the case of Revenue-offices and the offices of Government not included within the scope of the Bill, namely, that, in the case of the former, there was some evidence that destruction of records was carried on and that rules were required; in the case of the latter, there was no such evidence. He (MR. THORNTON) was not afflicted with a phrenzy for legislative symmetry, and preferred not to legislate unless there were grounds for believing that legislation was practically wanted. Should it appear, hereafter, that other Government offices required to be relieved by periodical destruction of papers, including private documents, it would not be difficult to pass an amending Act.

The Hon'ble MR. STOKES said the extension of the Bill to records, books and papers contained in revenue-offices (the expression "revenue-records" did not occur in the Bill) was made not merely at the suggestion of the Hon'ble Mr. Thornton, but also of Mr. Barkley (now, or lately, a Judge of the Chief Court at Lahore), and lastly, of Mr. Field and Mr. O'Kinealy with the concurrence of His Honour the Lieutenant-Governor of Bengal. Such records, he was told, occasionally did comprise private documents, and for this reason they should be dealt with in the Bill. He was therefore compelled to oppose this motion also, and to express a hope that the Hon'ble gentleman would now allow the Bill to become law.

The Hon'ble MR. HOPE said that, in the first place, no answer had been given to his question as to what revenue-records were. In the second place, he believed it was a mistake to suppose that the power given was purely permissive. The object of the rules was the protection of private parties, and therefore the word "may" would be construed as obligatory and imposing a duty for the benefit of the subject. Instead therefore of the Bill being permissive, it *required* that rules should be made. He knew that rules existed in Bombay, as well as in the Panjáb. But his argument was that it would be better to leave the framing of this sort of rules to the action of the Local Government instead of requiring them to be made as law. The Council had no proof, except from the two Local Governments named, that any of them desired or found it necessary to have legislation on the subject, and he thought that it was much better to leave the matter in the hands of the executive officers.

The Motion was put and negatived.

His Honour THE LIEUTENANT-GOVERNOR moved, as an amendment to section 5, that all the words after the word "sanction" in line 2, to the word "rules" in line 6 be omitted. Great stress had just been laid, and he thought very properly, on the importance of the rules under this Bill being approved by the Local Government. If the rules went before the Local Government, it had been said, local peculiarities would receive that consideration which they could receive only at the hands of the Local Government; and it was on the ground of the local knowledge which was required to make rules under the Act work satisfactorily that the proposal to give detailed instructions in the Bill as to the form of the rules had just been negatived. But he was surprised to see, in the face of that argument, that, as regarded the largest Province of India, namely Bengal, the Local Government had been entirely set aside, and such protection as the people would get from the security given to them of having the rules, which would be framed by the Court, tested, examined and confirmed by the local executive authorities was set aside, and the section provided that the rules for all the District Courts of Bengal should be framed by the High Court, and should be submitted, not to the Local Government, to whom the rules framed in the other Provinces must be submitted, but to the Government of India, which had just avowed itself not to be in a position to deal with these local questions. The only security to persons interested in suits would be to provide that the rules should be approved and sanctioned by the Local Government, and he therefore proposed the amendment. An alteration had been made in the Bill since he had expressed his approval of its principles.

The Hon'ble MR. COCKERELL wished to say a few words in explanation of the vote which he intended to give in reference to this amendment. The Bill as introduced into the Council provided for the rules to be framed under the Act by the High Court at Calcutta being referred for the sanction of the Local Government; but it had been represented to the Committee that such a provision would be inconsistent with the general practice obtaining in cognate cases, under which the Government of India was the general referee in matters in regard to which the action of this High Court required the concurrence or approval of the Executive Administration. He was not going to say anything on the very delicate question of the relations between the Local Government and the High Court of Calcutta in the matter of executive control. It was well known to the Council that on this point high functionaries had from time to time displayed extreme sensitiveness. He (MR. COCKERELL) had advocated in Committee the propriety of making the reference, in the case of the High Court at Calcutta no less than in the case of other High Courts, to the Local Government, but had been over-ruled on the ground that it would

be an innovation on the existing practice. But he thought that, in a Bill of the kind before the Council, it was essentially necessary, whatever might be the general practice, that rules framed by the High Court at Calcutta should be made subject to the approval of the Local Government.

The Hon'ble MR. STOKES said that, as the Bill was originally framed, it provided that all rules made by the High Courts should be submitted to the Local Government for approval. But the High Court at Calcutta had observed, with perfect accuracy, that the practice was that rules made by that High Court should be approved by the Government of India, and not by the Local Government, and the Committee altered the Bill accordingly. Now His Honour objected that he would have no opportunity of seeing that the rules made by the High Court at Calcutta were adapted to the circumstances of the Province. It seemed to MR. STOKES that, by adopting a middle course, namely, by providing that the rules should be submitted, in the case of the High Court at Calcutta, "through the Local Government to the Governor General in Council," the difficulty raised by His Honour the Lieutenant-Governor would be obviated and the *amour propre* of the High Court preserved. And he proposed, with the permission of His Excellency the President, to move an amendment to that effect.

His Honour THE LIEUTENANT-GOVERNOR strongly objected to any distinction being made between the High Court at Calcutta and the High Courts of other Provinces in a Bill such as this. If local experience and the control of the local executive was called for in one case, it was called for just as much in the other.

The Hon'ble MR. STOKES said that the change which His Honour proposed would be very annoying to the Calcutta High Court. No one knew better than His Honour that the world was governed by feeling as well as reason, and that neither of these factors should be disregarded by a legislature. Besides, such distinctions as were made by the Bill had often been made by this Council; see, for instance, Act X of 1875, section 5, which provided that, for the exercise of its original criminal jurisdiction, each High Court might hold sittings in the Mufassal, "in the case of the High Court at Fort William, with the consent of the Governor General in Council, in all other cases, with the consent of the Local Government." Parliament, moreover, in framing the High Courts Act (24 & 25 Vic., c. 104) had made a clear distinction between the Local Governments of Madras, Bombay and North-Western Provinces and the Local Government of Bengal. In fact the latter Government was ignored.

The Hon'ble MR. HOPE said the amendment proposed was entirely in harmony with the vote which had been just passed on the first of his two amendments. It was held that the Local Government was best fitted to deal with questions such as would be provided for in the rules passed under the Act.

The Hon'ble SIR JOHN STRACHEY gave his support to the amendment of His Honour the Lieutenant-Governor. He thought it was not right that the legislature should in any way, even in a small matter like this, recognise the principle that the relations between the High Court of Fort William and the Local Government of Bengal ought to differ in any way from the relations of the High Courts of other Provinces with the Local Governments of those Provinces.

The Hon'ble SIR ALEXANDER ARBUTHNOT said there were two amendments before the Council, one proposed by His Honour the Lieutenant-Governor, and one moved by his Hon'ble friend the Law Member. He now ventured to propose a third amendment. He ventured to suggest that the reference to the Government of India of the rules made under the Bill be not confined to the Province of Bengal, but be extended to all the Provinces of India. It seemed to him that by taking that course they would to some extent meet the objections which had been advanced by the Hon'ble Mr. Hope, and they would also meet the other objection to which allusion had just been made, but which he would not more specifically characterize. He did not think that the amendment which he was about to propose, would entail much additional labour on the Government of India, and the effect of it would be, that in those matters in which uniformity might be desirable, uniformity would be ensured; and that in those respects in which defects in the rules might be capable of a remedy, a remedy would be given. He would move that, for section 5 of the Bill, the following be substituted, that is to say:—

"All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law."

His Honour THE LIEUTENANT-GOVERNOR then said that the amendment now proposed by the Hon'ble Sir Alexander Arbuthnot would meet his view, and he therefore withdrew his amendment.

The Hon'ble MR. STOKES also withdrew his amendment. The Hon'ble Sir Alexander Arbuthnot's amendment was in exact accordance with the procedure prescribed by the Court Fees Act, section 20, as to rules made under that section.

The Hon'ble SIR ALEXANDER ARBUTHNOT'S amendment was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

PRESIDENCY BANKS ACT AMENDMENT BILL.

The Hon'ble SIR JOHN STRACHEY introduced the Bill to amend the Presidency Banks Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Morgan, Hope, Colvin and the Mover. He said that the Statement of Objects and Reasons annexed to the Bill left him little or nothing to say on behalf of the motion made. When he had asked leave to introduce the Bill, he had explained to the Council the object with which it was brought forward. The most important provision in the Bill was that which he had stated last week. He then said—"Its necessity had mainly arisen from doubts which had been expressed as to whether the Banks had power, under the Act of 1876, to borrow money by pledging the assets or property of the Bank." The three Presidency Banks presented memorials to the Government and begged that the law might be so amended that all doubt on this subject might be removed. The other sections of the Bill provided for some small amendments which it was thought desirable to take this opportunity of making. There were only one or two of those amendments on which he need say anything more than was said in the Statement of Objects and Reasons. The provision by which it was proposed that the President and Vice-President should not be eligible for election for two consecutive years was based on the model of the Bank of England. He believed that the Governor and Deputy Governor of the Bank of England practically served for two years; and if on discussion in Committee it should be thought right that the Presidents and Vice-Presidents of the Presidency Banks should be allowed to serve two consecutive years, the Government had no objection to offer. He might add, in reference to some remarks which had been made by one of the Banks, that at one time it was thought it might be necessary to make legal provision to enable the Banks to make loans on provincial debentures. The Government had been advised that these securities did not differ from other securities guaranteed by the Secretary of State for India. His Hon'ble friend Mr. Hope at the last meeting of the Council made some remarks which appeared to show—SIR JOHN STRACHEY was not sure that he interpreted the Hon'ble Member correctly—that he desired to take the opportunity of urging the propriety of making some important changes in the existing law. SIR JOHN STRACHEY thought it right, therefore to say that the Executive Government did not consider that any important changes in the existing law ought now to be made; and under these circumstances, he did not consider that any useful purpose was to be gained by discussing the subject. As he had said last week,

the Act had been in force very nearly three years, and there was no doubt that it had worked on the whole exceedingly well. Such small amendments as it was now proposed to make were for the most part proposed in accordance with a desire expressed by the Banks themselves, and there appeared to the Government no reason for altering at present any of the substantive provisions of the law.

The Hon'ble MR. STOKES said that he wished to supplement his hon'ble friend's remarks by a few words explanatory of the doubt which had been raised as to the power of the Directors of the Presidency Banks to borrow in India by pledging assets. It might, at first sight, be supposed that they already possessed such a power, for power to borrow was so necessary to a banking company that its directors could not be deprived of it save by express words or necessary implication. Furthermore, there was clause (*a*) of section 36 of the Presidency Banks Act, which authorized the Banks to do "all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business hereinbefore specified." In point of fact, a high legal authority in England had held that the Directors of the Presidency Banks had this power to borrow, and his view was supported by Mr. Justice Lindley, in the new edition of his treatise on Partnership and Companies (p. 270), and by the decision of the Judicial Committee in the *Bank of Australasia* v. *Breillat*, 6 Moo. P. C. 152. Certain leading members of the Calcutta Bar, however, had thought it possible that the particularity with which the Directors' powers were specified in the Act might possibly lead the Judges to hold that power to borrow by way of pledging assets (which power was not so specified) was not intended to be conferred on the Directors; in other words, that the Act was in this respect restrictive of the ordinary powers of Bank Directors. MR. STOKES had a better opinion of the Judges; but the existence of such a doubt, when expressed by gentlemen of great professional eminence, fully justified the proposed legislation.

The Hon'ble MR. HOPE said he had only to explain that, at the last meeting, the Council were not in possession of any information as to what the general scope of the Bill was to be, and therefore he thought it not out of place to express his general opinion that the opportunity should be taken to amend the Act in the direction which he had indicated. But now that he had seen the Bill, he thought that the amendments he had in view could not well come within its scope. He, therefore, disclaimed any desire to hamper this Bill by any such suggestions. Time, he thought, would soon show important amendments made in the law relating to banks in England, which we should be compelled to adopt here.

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY also moved that the Bill be published only in English in the *Gazette of India*, the *Calcutta Gazette*, the *Fort Saint George Gazette* and the *Bombay Government Gazette*.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 12th March, 1879.

CALCUTTA;
The 5th March, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Exd.—J. G.

Govt. Central Press.—No. 740 L. D.—25-3-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 13th March, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

General the Hon'ble Sir E. B. Johnson, K.C.B., C.I.E., R.A.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble E. C. Morgan.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R.E., K.C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India be taken into consideration. In doing so, he said :—

"My Lord, At an earlier stage of the measure, when presenting our first report from the Committee, I said I would, when at this stage, explain how we had dealt with the very many suggestions and varied criticisms we had received from public Administrations and from private individuals; and this explanation will be best afforded by a perusal of the Bill, in which many of the suggestions will be found adopted and criticisms given due weight.

"Where we have not thought it desirable to embody any specific recommendation or to adopt any alteration, we have, by the very large and liberal powers conferred in the eighth clause on Railway-Administrations, enabled those bodies, when experience proves the necessity and the public interests require, to make such rules and arrangements consistent with the law as will meet any omission which we have made.

"That the law even now is complete, or that we have anticipated every contingency, is what we cannot claim. A recent case will show this. We had discussed at our last meeting the propriety of considering what course should be adopted in the case of persons who were travelling, or sought to travel, on Railways, whilst suffering from dangerous, infectious or contagious diseases, and we left the subject believing that we had sufficiently provided for this contingency, when an incident that happened subsequent to this decision of ours showed that there was still something wanting. That deficiency we have now supplied, and the subject is to be dealt with by special rules.

"The Committee has adhered as closely as possible to the existing law and practice, and has limited its task to the definition of what might have been before obscure, and to the simplification of what might have been confusing.

"The greatest innovation in this measure, strange to say, is to be found in the fourth clause, which gives legality to the employment of locomotives in our Railways—a power which, although we have embarked during the last quarter of a century on the construction and working of some thousands of miles of Railway, we do not now possess; by this omission State and Company being rendered liable to be indicted for the use of engines as perpetrators of a common nuisance or disturbers of the public peace and safety.

"We have extended the provisions and protection of the law to Railways owned by private individuals and to those in Native States, and we have also brought within its influence the auxiliary carriage by water of the fleets and ferries working on our great rivers in connection with our land-lines.

"A small, but by no means an unimportant, extension of what constitutes a Railway-servant has been made, and this will now include those most independent of gentlemen—the coolies—employed by the sub-agents of Contractors of the Companies for loading and unloading trains. Their exemption, hitherto, from the application of the law had left the Railway-Administration and its customers completely at their mercy, and this was sorely felt during the recent heavy famine-traffic.

BENGAL SECRETARIAT

"Although, hitherto, it has not been the custom to permit public running on a line until it had been certified after inspection as fit for traffic, yet this prohibition has not been compulsory as it is in England, and I now ask for power to make it so here also.

"The new law in reference to accidents will slightly increase the number of accidents to be reported over those hitherto required to be brought to notice; but the extension will not entail much additional labour on the Railway-staff.

"By the Bill, as last settled, it was left optional to the various Railway Companies to make at their own will and pleasure such general rules as they might think fit for the working and management of their lines. It is most satisfactory to me to have to say that I carried the late Railway Conference entirely with me, in rendering it obligatory to make these rules. Under this provision, the very many suggestions for securing the safety, comfort and convenience of the travelling public will be from time to time considered and drafted as the case and circumstances may dictate.

"The legislation regulating the carriage of property by Railway has been brought within this Bill, and has been removed altogether from the operation of the Carriers Act of 1865, by which the Railways in their arrangements with their customers have been hitherto guided.

"To avoid my making any error or giving cause for any misunderstanding, and to render unnecessary any attempt by me to explain a very intricate and technical matter, I should prefer to quote in full paragraphs 9, 10, 11, 12, 13 and 14 of the Report of the Select Committee. They are as follows:—

"'9. On further considering the question of the liability of carriers by Railway for loss or damage to ordinary goods, as distinguished from goods for which a special insurance-rate, as it is sometimes called, is chargeable, we are of opinion that no mere adaptation of section 7 of the Railway and Canal Traffic Act, 1854, such as is proposed in paragraph 7 of our former report, will suffice to put the law into as clear and simple a form as is desirable. The amendment we propose in section 10 will be found when the entire law bearing on the point is looked to, to be, except in one particular to which we shall presently advert, an amendment in point of form only; but it is nevertheless desirable that we should explain it in some detail.

"'10. The law now governing the liability of Railway Companies in India in such cases has recently come under the consideration of the High Court at Bombay in the case of *Kuvarji Tholsee Dass* v. *The Great Indian Peninsula Railway Company*. It has to be collected with some pains from sections 151, 152 and 161 of the Indian Contract Act, which treat of the responsibility of bailees in general, the Carriers Act of 1865, which treats of the responsibility of common carriers, and section 11 of the Railway Act of 1854.

"'By these enactments it was intended to provide* that a Railway Company should be liable for loss of, or damage to, ordinary goods only when such loss or damage arose from the neglect or misconduct of its servants; and further, that no Company should by any special contract be able to relieve itself of liability in such cases. But, though the Bombay High Court, in the case just referred to, held that the effect of these enactments when taken together was, at all events as regards the main point, in accordance with the intention of the framers, it arrived at this conclusion only after a discussion which makes it clear that some simplification in point of form is desirable.

* See, as regards the Railway Act, the Statement of Objects and Reasons of the Carriers Act, 1865.

"'11. What we now propose is to remove contracts to carry by Railway altogether from the operation of the Carriers Act of 1865, and to frame the section of this Bill regarding them in such a manner that the whole law will be found in that section and the provisions of the Contract Act relating to bailments.

"'Under sections 151 and 152 of the Contract Act, carriers by Railway will be bound to take the same care of the goods entrusted to them as a prudent man would take of his own; and where they take such care, they will not be liable for any loss or damage that may occur.

"'Under section 10 of the Bill, they will be prohibited, as a rule, from freeing themselves by any special contract from the obligation thus imposed upon them.

"'12. So far the law will be in strict accordance with the existing law, or what the existing law was intended to be; but here we have introduced an alteration of some, though not of very great, importance by excepting from the general rule prohibiting special contracts such contracts in writing as may be in a form approved of by the Governor General in Council, and may be signed by the consignor.

"'It will be observed that this exception corresponds to the proviso regarding special contracts in section 7 of the Railway and Canal Traffic Act, 1854, with this difference that, while the latter Act provides that the special contract shall be effectual and relieve the Company only if it is held by the Court to be reasonable, thus leaving the validity of the contract to be determined *ex post facto*, our exception makes the contract good, if in a form to be approved beforehand, and thus avoids the uncertainty which, owing to the different views that may be taken by different Judges as to the reasonableness of a contract, frequently attaches to such transactions in England.

"'13. It need hardly be said that contracts going to relieve absolutely from liability for neglect or misconduct would usually be held unreasonable in England; but there are cases in which it has been held that a carrier by Railway may reasonably exempt himself, at least conditionally or partially, from such liability, as, *e.g.*, where he stipulates that he shall not be liable unless a claim is made within a certain time after the loss or damage has occurred, or where he is willing to carry subject to the ordinary liability at a fair rate, but offers as an alternative to carry free from all liability at a lower rate, or where he exempts himself only from liability for damage arising from loss of market caused by delay. It is to meet cases of this sort that the exception has been introduced.

"'14. Our attention having been directed since the submission of our previous report to the danger to which carriers by Railway in this country are exposed of having fraudulent claims brought against them in respect of valuable property of small bulk alleged to have been lost in transit (a point dwelt on at some length by the Select Committee in the Act of 1854), we have deemed it well to omit the limitation of Rs. 100, which we introduced into Bill No. II, and to require (section 11) that such property shall (as at present) be declared in all cases, whatever be its value.'

"The very great importance of this subject to the trade of India must plead for me in giving the Council so long a quotation. In case of goods lost or damaged, a subject on which we have received many communications, we have, in accordance with the Carriers Act of 1865, section 91, relieved the owner from, and thrown upon the carrier, the onus of showing how the loss or damage was occasioned. By section 14, we have somewhat enlarged the powers now held by the Railway Companies to get rid of property left on their hands beyond the reasonable time in which it may be expected that the owner should remove it, and provision has been made to prevent speculative persons from using the Station-premises to the serious injury of traffic by blocking it up with their goods. A recent incident in Southern India has led to power being taken to deal with persons suffering from infectious diseases. This power is necessary, but in giving it effect, the Railway-Administration will not be relieved from its duty of taking care to see that everything proper for the protection and convenience of the person removed shall be attended to.

"We have mitigated the penalties hitherto following any one who smoked tobacco whilst travelling by Railway. Some other alterations have been made, which involve no actual change in the law, but which were principally made in order to secure simplicity and clearness. With these I will not trouble the Council. The Committee has received many suggestions, all of which have been carefully considered, and have more or less led to the moulding of the present measure. But whilst the Committee has jealously guarded the interests of the public, the users and customers of the Railway, it is to me a source of very considerable satisfaction, and bearing in mind how legislation in this direction was formerly met from the Railway authorities, it is a source of congratulation to this Council, that I am able to present for its acceptance and adoption, and for Your Lordship's approval, a measure complete, I think, and sufficient in itself, and one which has at the same time received the sanction and approbation of the very able and efficient Agents and Managers of the various Railway Companies of India. I take this occasion to thank those gentlemen for the aid and co-operation which they have afforded me in this matter as well as in others, and I would desire to record my appreciation of the relations that now

exist between their Administrations and the Department with which I am connected—relations which cannot fail to be beneficial to the trade, the commerce, and the industry of India.

"A few words here, my Lord, illustrating the present condition and prospects of the Railways of India, may not at this moment be inopportune, because representations have of late been put forth which are not by any means favourable to Railway enterprise in this country.

"The total outlay on the Capital Account of the Guaranteed Railways up to the 30th March of this year (1879) may be taken at about 97 millions sterling, including debenture capital. The nett receipts of these lines for this coming year ending in March 1880 are estimated at 528 lákhs, or about £4,861,000 at the current rates of exchange, and this will yield a dividend of 5 per cent. on the aggregate investment.

"As from these nett receipts the State has to pay to certain Companies earning profits in excess of the guaranteed interest, a moiety of the surplus, this dividend is slightly decreased; but it is not till one comes to review the present condition of the Capital Account that the practical value of Railway enterprise as inaugurated by Lord Dalhousie becomes more apparent and, to say the very least, hopeful and encouraging. This has been put to the test by the recent arrangement for the purchase of the East Indian Railway. This line is to be acquired at a premium of 25 per cent. In 1877 it yielded a return of 9 per cent.; this last year its returns we may take with safety at 8½ per cent. From these figures it is clear that had not the Company been obliged to pay the State one half the surplus profits in excess of the guaranteed capital, coupled with the power of the State to effect a compulsory purchase, the value of the shares would have stood very much higher.

"I do not consider that I shall be making at all too bold a statement in saying that this purchase will have been effected at 30 per cent. below what would have been the market-value of the property had it not been subject to the condition to which I have alluded.

"The Great Indian Peninsula, Bombay, Baroda and Central India Railways are also surplus-paying lines with their shares at high premiums. The Oudh and Rohilkhand has almost risen to its guarantee, and when once it has been linked on to the East Indian Railway by the bridge now authorized over the Ganges at Benares, and when its present northern terminus has been extended, there is every prospect of this line also paying a considerable surplus.

"The total capital outlay on State Railways up to the end of this financial year will be Rs. 22,20,00,000, and the probable nett revenue for the ensuing year will be Rs. 32,87,000 ; but in this very early stage, and in the very incomplete condition of these lines, no fair judgment can be pronounced on these figures. We must rather compare them, as I have done, with the history of the older lines.

"I must here rather qualify my concurrence in the wisdom of executing Railways by the State, and subject to the same rules and conditions as all other State expenditure, and this method certainly leads to make our State lines compare unfavourably with the Guaranteed lines. I do not find fault with these rules in themselves ; but their application must, and does, frequently retard the progress of works at most critical periods. This, in addition to the reason I have given, is often due to the financial necessities of the State ; but, however right or proper it may be, that the State having undertaken the duty of constructing Railways must, in doing so, subject its proceedings to its ordinary rules, and must be guided by its financial necessities, this does not the less remove the fact that the progress of a Railway is often interrupted for want of funds, and that this delay must tend to enhance its cost very considerably. Owing to this, the lines constructed by the State are severely weighted in any comparison which may be made between them and their more fortunate neighbours, the Guaranteed lines, that have not been subject to similar checks and restrictions.

"A few words, illustrating especially the financial position and prospects of the State lines, may not be without interest, and may dispel some of the fears and anxieties which I have seen expressed by those who are no doubt well-wishers to the success of these undertakings.

"I have never concealed my own doubts as to the wisdom of the policy of working, whatever I may be prepared to admit as to the advantages of constructing, lines under the direct authority of the State, and then only through the agency of responsible contractors ; so that in bearing my testimony to the efficiency, under many drawbacks—not the least of them being the difficulty of obtaining for an administration working under the hard and stiff rules of a Government bureau, that elasticity and freedom of action which is the very essence of commercial enterprise—I cannot but admit that whilst a Manager or an Administration is seeking superior authority, through the tortuous routes by which it can usually be only approached, a market may be lost or a traffic diverted. The public suffers a double loss, for it suffers through the individual and through its Government.

"But in spite of all this, and remembering that the older enterprises run from one certain mart to another through known and well-beaten tracks of long established trade-routes, the light lines opened during the last four years, though still far from complete, and though even yet fragmentary in every detail and in equipment, give results far more promising as to their future than the heavier lines which have passed beyond all the trials of their early youth.

"The receipt and expenditure per traffic train-mile of the State lines compare very favourably with similar statements of the Guaranteed lines; I will not weary the Council with the figures in detail, but will prefer, because it will, I think, more clearly describe what I want to show, to confine myself to a comparison of the nett receipts of the older with the younger lines.

"The East Indian Railway in the first six years of its life never touched ·7 per cent. any one half-year. The Rájputána gave the last half-year of which the returns are complete, and within four years of its opening, 2·55 per cent. The Jabalpur line in its sixth year had a percentage of nett earning of 2·36. The Tirhut line barely into its second year gave 1·32.

"The Neemuch and Holkar line, equally heavily weighted as was the Great Indian Peninsula Railway, gave the first year a return exceeding 2 per cent. the latter not reaching that till its fourth year.

"The Sind, Panjáb and Delhi, as well as the Oudh and Rohilkhand, had in their earlier existence to some extent still to labour under conditions adverse to doing a good business, and are in the same category as some of our State lines, broken up or interlaced with other systems; but even admitting all this, the early progress of the latter will stand a comparison with the former.

"This success—a success which, I think, no one will now question—was hardly even anticipated at so early a stage of the railway-life of India by the great proconsul who was its originator; and coming down to more recent times, when a further forecast was made of railway development during the rule of Lord Lawrence, I find that it was even then calculated that the general revenues of India would have to be bearing at the present moment a burden of interest amounting to more than one million sterling. As a matter of actual fact, we have to-day a mileage of open lines in excess of what was contemplated at the time of the forecast, and the nett receipts from these lines are almost in equilibrium with the charge for interest on their capital cost.

"One feature in connection with the capital expended on railways in India has an almost exceptional interest, namely, that this capital represents the total amount which these undertakings have cost. Mistakes have been made, some money has been perhaps used unwisely, nay, possibly, even extravagantly. But on the whole in return for this capital which represents every shilling that has been expended on these undertakings, the community has received full value, and this value has been secured without the loss or ruin which has so often attended the earlier history of similar enterprises in other parts of the world.

"Satisfactory and hopeful then as are our railway interests, I can only regret the circumstances which are now somewhat checking the further progress of those lines which this Empire so much needs, though I believe and trust that the very caution that we are now exercising will eventually justify, and that at no distant date, vigorous and consistent measures for completing the main arterial systems of railway-communication throughout this peninsula."

The Motion was put and agreed to.

The Hon'ble MR. THORNTON said that, although the Bill had been greatly improved by the Select Committee both in arrangement and in substance, and although the objections he had to many provisions in Bill No. II had been remedied in Bill No. III, there were some points in the Bill under consideration in regard to which he would invite explanation from the Hon'ble the Mover.

The object of his first question was to ascertain whether sufficient provision had been made in the Bill for securing the reasonable comfort and convenience of travellers, and especially Native travellers. He observed, and observed with satisfaction, that section 8 of the Bill did impose upon Railway-Administrations the obligation to make rules for preventing over-crowding of carriages and "for regulating the travelling upon, and the use, working and management of, Railways," and that these rules were subject to the approval of the Government of India; but he would ask whether the wording of the latter clause was sufficiently wide to make it obligatory on Railway-Administrations to provide for the reasonable wants of travellers, and especially Native travellers, at stations, such as suitable waiting-accommodation, drinking-water and other necessary requirements. In the case of English travellers the want of a legal obligation was to a great extent supplied by the pressure brought to bear upon Railway-Administrations by public opinion in the newspapers; but this force was in great measure non-existent in the case of Native travellers. He would suggest, therefore, that, if there was any doubt upon the subject, it might be removed by a suitable amendment of clause (*d*) of section 8.

The next question he would ask the Hon'ble the Mover related to a small matter—contained in section 29. That section declared that persons neglecting or refusing to give an account of the quantity and description of property tendered for conveyance by rail, or giving a false account of such property, shall be punished with fine which may extend to one hundred rupees for every ton of such property, or for any parcel exceeding one hundred-weight, &c., &c. Why, he would ask, was the quantity of goods referred to in this section expressed in weights taken from the English system? In India we had, in the *ser*, a legal unit of weight familiar to the people. Why should not the quantities in question be expressed in multiples of the *ser*, instead of in weights which were unknown quantities to nine-tenths of the people affected by the section and, he would add, to most of the Native Judges who would have to decide cases under its provisions? He would venture to recommend that, in this section, for the word "hundred-weight," the words "forty sers" should be read; and for the word "ton," the words "eight hundred sers"—amounts which would be popularly known as "one maund" and "twenty maunds" respectively.

The third point in regard to which he would invite explanation from the Hon'ble Mover was of more importance. It related to section 42, which imposed penalties on the owners and persons in charge of cattle straying or driven on to Railways. The section provided, *inter alia*, that—

"The owner or person in charge of any bulls, cows, &c., straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle-Trespass Act, 1871."

And again that—

"Whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose, the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act."

In regard to these clauses—or rather the corresponding clauses in Bill No. II,—the Panjáb Government wrote as follows:—

"Section 40"—that is, section 42 of the present Bill—"in a country like the Panjáb is one of great importance; and, unless the Act, in respect of clause 2 of this section, be amended, the Lieutenant-Governor is of opinion that it will give rise to great oppression and unpopularity, as the draft section throws upon the owners of cattle a very unjust burden. The clause is similar to one which was proposed in 1871, but which was rejected. No penalties should be imposed on the owners of cattle found on the railway unless the line be fenced. Where a fence

considered sufficient is in existence, then no claim for damage to owners of cattle should lie; but the Lieutenant-Governor would strongly protest against the enactment of clause 2, or the imposition of any penalties before railways are properly fenced."

Notwithstanding the strong protest he had just read, the clauses referred to had been retained by the Select Committee. In the course they had adopted, the Committee were doubtless influenced by cogent reasons; but these reasons had nowhere been explained. The matter was not referred to in the report of the Committee, nor was it, so far as he could hear, touched upon by the Hon'ble the Mover in his speech. It seemed due to the Lieutenant-Governor of the Panjáb that some explanation should be afforded of the grounds on which his strongly-felt objections had been over-ruled.

Colonel the Hon'ble SIR ANDREW CLARKE said that the whole point of his Hon'ble friend's last objection turned upon whether the men in charge of herds of cattle wilfully allowed the cattle of which they were in charge to graze upon railway-embankments. It was only when they *wilfully* did that, that they would be liable to penalty. The Council could, from their own experience of herdsmen in this country, say whether it was not their common practice to turn their herds on wherever they found good pasturage; the banks of railway-lines were covered with excellent pasturage, and therefore herdsmen were in the habit of driving cattle to feed upon it. Where the Police drove the cattle off they found it necessary, in some instances, to follow them up to the owners. Personally, he should like to see every railway-line fenced, but it was uncommonly hard upon the travelling public that their lives should be risked in consequence of cattle being wilfully driven upon the line to graze. The question had been frequently raised in the interests of the public, and he thought that the principle of the clause to which objection had been taken was a right one. It seemed to him a self-evident proposition that such a provision should be made to prevent accidents.

His Excellency THE PRESIDENT supported the view which was taken by the Hon'ble Member in charge of the Bill. Herdsmen in this country, as was well known, were in the habit of deliberately driving their cattle and leaving them to feed on the best pasturage they could find, quite irrespective of the ownership of the land. If, as a matter of necessity, there must be lines of railway which were unfenced, then he thought some punishment must be provided for wilfully driving cattle to feed on the banks of such railways.

Colonel the Hon'ble SIR ANDREW CLARKE said, with reference to the other points raised by his Hon'ble friend, that the various proposals respecting the comfort and convenience of passengers were so many and in such detail that

the Select Committee thought them beyond the scope of a legislative enactment. But by making it obligatory on the Railway Companies to make rules in consultation with the Consulting Engineer to Government, and providing that those rules should be subject to the sanction of Government, the Committee thought that it would be in the power of Government to secure all that was necessary for the comfort and convenience of passengers. . He thought that, as a general rule, the desire of the Railway Companies and Administrations was to provide, as far as possible, for the various wants of passengers. A great deal in that respect had been done in recent years, but it was not an easy task to provide all that was necessary, and there were, no doubt, deficiencies in many of the railways.

With reference to the over-crowding of passengers, his experience was that the Natives themselves were to blame, for they would force themselves into carriages in which there was no available room, and he thought it was not the desire of the Railway-Administration to put more persons into a carriage than the carriage was intended to accommodate.

His Honour THE LIEUTENANT-GOVERNOR suggested the addition of a few words to clause (*b*) of section 8. He could not agree with Sir A. Clarke that Native passengers were alone to blame themselves for over-crowding. He believed that they were helpless in the matter and were ill-treated by railway-servants. He had himself very often seen passengers forced by guards into carriages where there was no room. He thought it necessary to pass rules to regulate the accommodation of passengers in such matters as water-supply, shelter from the sun, and other station-accommodation.

General the Hon'ble SIR E. B. JOHNSON said that he had constantly, when travelling as Quarter Master General, seen Native third class passengers locked up and utterly unable to leave their carriages when passengers of the first and second classes were allowed to parade the platform of a railway-station. If there was time to allow passengers to leave the train, he thought that the Natives should also be allowed to quit their carriages. He would require Station-masters to open the doors of all the carriages at each halting station.

The Hon'ble MR. STOKES agreed with His Honour the Lieutenant-Governor that the Bill as it stood did not make it compulsory on Railway Companies to make general rules to provide for the comfort and convenience of passengers. He would therefore suggest the addition to section 8, clause (*b*), of the words "and the provision to be made for the accommodation and convenience of passengers."

With respect to the other question, regarding the use of the English words "ton" and "hundred-weight," it ought to be remembered that this Bill was a consolidating measure, and those words were in the existing law, Act XVIII of 1854, section 14, and had never, so far as he knew, given rise to the slightest difficulty. As to the propriety of using the Hindústání term "ser" because it was the name of the standard weight recognised by the Indian legislature, he regretted to say that that was only nominally so; the ser was declared to be the standard weight of India by an Act (No. XXXI of 1871) which, though passed more than seven years ago, had unfortunately not been brought into force.

Colonel the Hon'ble SIR ANDREW CLARKE observed that, as a general rule in all Guaranteed Railways, the maximum carrying capacity of every wagon was marked on it both in tons and in maunds for the information both of the public and the servants of the Company.

The Hon'ble MR HOPE said the report of the Select Committee on the Bill, although it was dated 26th February, was only in the hands of the Members some time on Friday last. No sufficient time was thus afforded for consideration. Moreover, when he glanced at the report, it struck him that the Committee was an exceedingly limited one. There seemed to be more than one conspicuous omission of well-known names which might have been added to it. He need only mention one Member, the Hon'ble gentleman on his left (Lieutenant-General Sir M. Kennedy), who might be supposed to be able to give valuable advice. However, notwithstanding this short notice and imperfect Committee, he had come to the Council with the intention of accepting this Bill on trust, just as other Hon'ble Members had on occasion to accept on trust Bills which they had not had time to go through themselves. But what had taken place led him to doubt the expediency of doing so. A number of objections of various kinds had been raised, some of which were held by Hon'ble Members to be of considerable importance to the Native community, and some provisions of this Bill imposed serious and possibly undeserved penalties on individuals. Suggestions had been devised to meet some of those objections, but he had not been able to catch what it was proposed to do; and he very much doubted whether objections of this kind, which were fundamental objections, could be satisfactorily disposed of in a few minutes at the Council table. He would suggest whether it would not be better to refer the Bill back to the Select Committee, to republish it, and to allow Local Governments, and amongst others the Panjáb Government, time to consider the provisions of the Bill as they now stood. He was aware that he could not, according to the Rules, move for the re-committal of the Bill, unless indeed he claimed advantage on the ground of its not having been seven days

in his hands, but he threw out the suggestion for the consideration of the Hon'ble Member in charge.

His Excellency THE PRESIDENT remarked that, considering the immense importance of some of the suggestions which had been made by the Hon'ble Mr. Thornton, he thought it would be impossible on the spur of the moment to meet those suggestions. It appeared to HIS EXCELLENCY scarcely desirable that the Bill should be hurried through the Council, and as the Hon'ble Mr. Hope had expressed a wish that the Committee should be enlarged, HIS EXCELLENCY thought the opportunity should be taken to do so.

The Hon'ble MR. STOKES observed that if the Bill were now referred back to the Select Committee, with the addition of other Hon'ble Members, he doubted whether the further report could be presented in sufficient time to be taken into consideration before the departure of the Council from Calcutta. Besides, even if the report were presented before the next meeting, Hon'ble Members, such as the Hon'ble Mr. Hope, might again raise the objection that the Bill had not been in their hands for the full period of seven days prescribed by the Rules. The Bill was quite too important a measure to be passed at Simla. The result of referring the Bill back to the Committee would therefore probably be to postpone the passing of it till the Council had returned next November to Calcutta.

Colonel the Hon'ble SIR ANDREW CLARKE thought that the objections which had been raised by his hon'ble friend Mr. Thornton had been sufficiently met by the explanations which had been offered in answer to them, and the suggestions for the amendment of the Bill which had been made. He admitted that, as regarded the trespassing of cattle on Railway-lines, there was a choice of evils. Either the risk of accidents from cattle-trespass in unfenced lines of Railway must be taken, or provision must be made for the punishment of the owners of cattle wilfully driven on embankments for pasturage, where the persons in charge of such cattle could not be identified. With regard to the necessity for making provision for the comfort and convenience of Native passengers, he thought it had been met by the amendment which had been suggested by his hon'ble friend Mr. Stokes. There was nobody more anxious to provide for the comfort and convenience of passengers than the officers of the Railway-Administration themselves, and for his own part, he had at once accepted the suggestion which had been made. With regard to the question of the weights to be recognised, the Bill followed the existing law in that respect; it had been found to work satisfactorily and he had heard no objection to it. This important Bill had nearly been completed and was ready to be brought up when

his hon'ble friend Sir Michael Kennedy joined the Council. If he had been here when the deliberations of the Committee were proceeding, SIR ANDREW CLARKE would have been glad to have had the benefit of his experience in settling the provisions of the Bill. The Bill had been a very long time under consideration, and the Committee had received a very large number of criticisms which had all been very carefully discussed and considered.

The Hon'ble MR. STOKES begged to remind His Excellency the President that the Bill was in one important respect most urgently needed. The absence from the present law of any provision legalizing the use of locomotives on railways, made it necessary that this Bill should be passed without further delay. For want of such a provision (the insertion of which had been expressly directed by the Secretary of State), every Railway Company in the country, and the Government as the proprietor of State Railways, were liable to protracted and expensive litigation. The suggested amendments of the section relating to cattle-trespass could not possibly be adopted; and the importance of the other two amendments had been exaggerated. There would be no difficulty in making them at once. The amendments which had been drawn up, he was of opinion, fully met the objections which had been taken to sections 8 and 29. He had often known amendments of infinitely more importance and difficulty made by the Council under circumstances precisely similar to the present.

His Honour THE LIEUTENANT-GOVERNOR suggested the substitution in section 29 of the words "five rupees for every maund of three thousand two hundred tolas" for the words which had been proposed by the Hon'ble Mr. Thornton. That would make the provision harmonise with the expression used in other Acts.

The Hon'ble MR. STOKES said that, on consideration, he thought it would be better to insert his amendment of section 8 as a new clause after clause (*b*) of that section. His motion would therefore be that the following clause be inserted after clause (*b*) of section 8:—

"(*c*) for regulating the provision to be made for the accommodation and convenience of passengers;

and that the present clauses (*c*) and (*d*) be lettered respectively (*d*) and (*e*)."

The Motion was put and agreed to.

The Hon'ble MR. THORNTON then moved that, for clause 3 of section 29 of the Bill, the following shall be substituted:—

"shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property; and such fine shall be in addition to any charge to which such property may be liable."

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE then moved that the Bill as amended be passed.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE wished to take the liberty before this Bill was passed, to point out once again that it appeared to be somewhat unfair to visit the shortcomings of Railway Companies upon the owners of cattle which strayed upon the unfenced embankments of railway-lines. Although cases had been known where persons employed in tending cattle had been found wilfully to drive the cattle under their charge upon railway-embankments for the purpose of grazing upon the pasturage there, yet it was difficult to prove where the offence was wilful and where it was not, especially with regard to unfenced lines, and it was hard to punish the owner for a matter which might have been purely accidental or unavoidable. He thought it should be made incumbent on Railway Companies to fence their lines of railway before inflicting any penalty for the trespass of cattle thereon.

The Hon'ble MR. COCKERELL desired to submit that the grievance put forward by the Hon'ble Member who last spoke was wholly sentimental. No one was better aware than that Hon'ble Member that the whole country of Bengal might be said, broadly speaking, to be unfenced; yet they had every day experience of cattle being taken from fields which were unfenced and carried to the pound, and there impounded until the owners paid the fine prescribed by law for their release; and if the cattle were unclaimed, they were sold to pay the expenses of their keep. Now, although the Bill before the Council imposed an additional fine for the wilful driving of cattle on lines of railway and the land belonging thereto which were unfenced, the principle of the enactment was the same as that of the Cattle Trespass Act, against which no objection of this kind had ever been urged.

In both cases the law threw upon the owners of grazing cattle the burden of taking such care of their property as would prevent it from causing injury to others, whilst the punishments imposed by the law were less or greater, according as the absence of due care entailed risk of injury to property only, or to life as well as property.

The Hon'ble MR. HOPE thought the objection which had been taken by the Hon'ble Mahárájá had been looked upon in an erroneous light; because, although the statement which had just been made that the whole of Bengal was an unfenced country might be true, it should be borne in mind that the penalty of impounding prescribed under the Cattle Trespass Act was an ordinary penalty; but the penalties under this Bill were extraordinary, and over and above the ordinary penalty imposed by law for the offence of cattle-trespass. Therefore, it seemed to MR. HOPE that there was no parallel between the two cases.

The Hon'ble MR. STOKES considered that the distinction made by this Bill was a perfectly reasonable one. Under ordinary circumstances, cattle-trespass caused no injury to life, limb or valuable property; but the trespassing of cattle on railway-lines was attended with extreme risk to the lives and limbs of passengers, and to valuable engines and carriages of the Companies. The legislature was therefore perfectly right in imposing extraordinary penalties on persons who allowed cattle to stray on such lines, whether fenced or unfenced. To require that all Indian Railways should be properly fenced was, in the present state of our finances, to ask an impossibility.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE thought that the reference which the Hon'ble Mr. Stokes had made to the important question of the risk to lives and limbs of passengers travelling by Railways ought to be an additional reason why it should be incumbent on Railway Companies to fence their lines.

His Honour THE LIEUTENANT-GOVERNOR remarked that very few of the State lines were yet fenced and that the speed of the lines was regulated with reference to that fact; it would be done in time, but the fencing of railway-lines could not be effected in a day, and in the meanwhile there would be danger of the traffic on Railways being entirely stopped if fencing was made a *sine qua non* to the running of trains.

Colonel the Hon'ble SIR ANDREW CLARKE observed that there was another reason why railway-embankments should be protected from the trespass of cattle. The grazing upon them of cattle caused injury to the embankments.

The Hon'ble MR. EVANS said that in this country, as a rule, there were no fences—arable and pasture land of various proprietors lay in one plain side-by-side. There was no fence between the land of each proprietor nor between the crops and the grazing grounds. It was the admitted duty of every owner of cattle to employ herdsmen to prevent their trespassing. If the cattle trespassed,

they were impounded and fines levied under the Cattle Trespass Act. There would be nothing contrary to the custom and habits of the country if the Railway were left unfenced. Efforts were being made to fence the Railways to diminish the risk of accidents, not because adjacent land-owners had any right to ask that they should be fenced. Meanwhile, heavy penalties must be imposed to protect the lives of passengers. The penalties sufficient for the protection of crops were not sufficient for the protection of the lives of the passengers by rail.

The Hon'ble SIR ALEXANDER ARBUTHNOT said the motion before the Council was that the Bill be passed. The Hon'ble Mahárájá Jotíndra Mohan Tagore had offered an objection, but had not moved an amendment. It seemed to SIR ALEXANDER ARBUTHNOT under all the circumstances to be undesirable that the passing of this Bill, which had been a long time under the consideration of a Select Committee, should be any longer postponed. The objections which had been raised in the course of that day's discussion had all, he thought, been thoroughly sifted, and as far as he was competent to judge, had been satisfactorily met. But with reference to this Bill, and also with reference to another Bill before the Council, objections had been raised to the effect that the Select Committees which had to report upon the Bills and to sift their provisions were unduly small. It appeared to him that there was considerable force in that objection, and that in the case of a Bill of such importance, and in the case of most of the Bills which came before the Council, it was very desirable that in future the Select Committees appointed should be somewhat larger. In the case of the present Bill, he agreed in the observation which had been made that it would have been very desirable to have had the benefit of the experience of Sir Michael Kennedy on the Select Committee, and he had no doubt that Sir Michael would have been added to the Committee if he had arrived at Calcutta at an earlier period in the progress of the Bill. It would have been better, also, if one or more of the Native Members of the Council had been sitting on a Bill which so materially affected the safety and comfort of every portion of the Native community. He would only add that he hoped no further objections would be made to the Bill being now passed.

The Hon'ble MR. STOKES had had nothing to do with the formation of the Committee on the Railway Bill. He regretted the absence from the Committee of the Hon'ble Sir M. Kennedy and Mahárájá Jotíndra Mohan Tagore; but he was confident that the omission to secure their assistance was due to mere forgetfulness on the part of the overworked Member in charge of the Department of Public Works. As to the Bills in his (MR. STOKES') charge and actually passing through the Council, he begged to inform the Hon'ble Sir A.

Arbuthnot that the Committee on each was abundantly full. Thus, the Committee on the Transfer of Property Bill consisted of seven Members, including the Hon'ble Mahárájá Jotíndra Mohan Tagore. On the Bill to amend the Code of Civil Procedure, six Members were sitting. On the Negotiable Instruments Bill, there were five Members. On the Alluvion Bill, there were seven. On each of the Bills dealing respectively with Legal practitioners and Coast-lights, there were three Members,—a number which, in his opinion, was amply sufficient for those Bills.

The Hon'ble MR. HOPE explained, with reference to the remarks he had made about the omission of Sir Michael Kennedy from the Committee, that his hon'ble friend had been nearly two months in Calcutta. He arrived before the assembling of the recent Railway Conference, from whose deliberations the Select Committee stated that they had derived great advantage. He therefore could not apprehend what there was to have prevented the Committee from obtaining the advice of his hon'ble friend. He merely mentioned these facts in support of the remarks which he had made regarding the smallness of the Select Committee on this Bill.

The Motion that the Bill be passed was then put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the North Western Provinces Land-Revenue Act, 1873.

Leave was granted.

PRESIDENCY BANKS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES, in the absence of the Hon'ble Sir John Strachey, moved that the order of the Council of the 5th instant directing the publication of the Bill to amend the Presidency Banks Act, 1876, in the *Gazette of India*, the *Calcutta Gazette*, the *Fort Saint George Gazette* and the *Bombay Government Gazette* be rescinded. The effect of allowing the order to remain unrescinded would be to postpone unnecessarily the passing of the Bill until the Council met at Simla or even until it returned to Calcutta. The present intention of Sir John Strachey was that the Bill, which merely effected a few trivial alterations in the Presidency Banks Act, should, if the Council consented, be passed at their meeting on Wednesday next.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then presented the Report of the Select Committee on the Bill.

BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON presented the final Report of the Select Committee on the Bill to prevent the indiscriminate destruction of wild Elephants in British Burma.

The Council adjourned to Wednesday, the 19th March, 1879.

CALCUTTA;
The 13th March, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Wednesday, the 12th March, 1879, was adjourned to Thursday, the 13th March, 1879.

Government Central Press.—No. 782 L. D.—4-4-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 19th March 1879.

PRESENT:

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I., Senior Member of the Council of the Governor General, *presiding*.

His Honour the Lieutenant-Governor of Bengal, K. C. S. I.

The Hon'ble Whitley Stokes, C. S. I.

The Hon'ble Rivers Thompson, C. S. I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K. C. S. I.

The Hon'ble T. H. Thornton, D. C. L., C. S. I.

The Hon'ble G. H. P. Evans.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C. S. I.

Lieutenant-General the Hon'ble Sir M. K. Kennedy, R. E., K. C. S. I.

The Hon'ble T. C. Hope, C. S. I.

The Hon'ble Mahárájá Jotíndra Mohan Tagore.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES presented the supplementary Report of the Select Committee on the Bill to amend the Code of Civil Procedure. Since the former report had been presented he had received valuable communications from Mr. Justice Ainslie and Mr. Justice Sewell White, both of the Calcutta High Court, which had led the Select Committee to make some changes in the Bill, and one or two further amendments of the Code. Under these circumstances, the Committee now recommended that the Bill as amended should be republished; but, considering the urgency with which some of the amendments were required, they were of opinion that the passing of the Bill should not be delayed for more than two months.

ALLUVION BILL.

The Hon'ble MR. STOKES also presented the preliminary Report of the Select Committee on the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

PRESIDENCY BANKS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Report of the Select Committee on the Bill to amend the Presidency Banks Act, 1876, be taken into consideration. He said that since the report was presented, the Government of India had received a telegram and a letter from the Bank of Madras proposing two changes in the Act. To enable the Council to understand this proposal, he must read the part of the Act relating to the qualifications of a Director, so far as it was material for his present purpose. It was very brief and clear :—

"No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder *in his own right* of unencumbered stock or shares of such Bank to the nominal amount of Rs. 10,000 at the least.

"No person shall be qualified to serve as a director if he holds *the office of* director, provisional director, promoter, *agent* or manager of any other joint-stock Bank established or having a branch or agency in British India."

Now, the Madras Bank wanted the Government to make two changes in this rule; first, they wanted us to insert after the words "in his own right," the words "or in right of a firm in which he is a partner;" and, secondly, they wanted us to define the word "agent" so as to prevent the member of a mercantile firm acting merely as the correspondent of a joint-stock Bank, such as the Comptoir d'Escompte, from being thereby disqualified as a Director. It was difficult to speak gravely of the latter proposition. The duties of the firm which had raised this question were, so far as regarded the Comptoir d'Escompte, simply to collect some of the Bank's bills and invest and remit the proceeds for the credit of the Paris Bank, as directed from time to time. No lawyer would hold for a moment that this constituted the collecting firm an "agent" in the sense in which that word was used in the Act. By 'agent,' as there used, was meant the gentleman at the head of the branch of a Bank doing its local business and thereby competing with the Presidency Bank—as Mr. Harper was the agent of the Oriental Bank in Calcutta and Mr. Stevens in Madras. And the present able and learned Advocate General of Madras (Mr. O'Sullivan) had given an opinion (which the Bank of Madras had sent us yesterday) distinctly to that effect. It would therefore be idle to introduce such a definition, and the Government of India objected to make useless changes in the law. The other alteration which the Bank of Madras proposed was of a substantial nature. They wanted to have it laid down in the Act that a man might be qualified as a Director of a Presidency Bank if he merely belonged to a firm holding shares in the Bank to the amount of Rs. 10,000. The Government of India opposed this change on principle. The object of the requirement that

shares should be held by a Director "in his own right" was to guarantee that every Director should personally have a considerable beneficial interest in the well-being of the concern. It was obvious that this security would be weakened if they were to allow a member of a partnership which, under the Indian Companies Act, section 4, might consist of no less than twenty persons, to be qualified as a Director merely because his firm held shares in the Bank to the amount of Rs. 10,000. The whole matter had been carefully considered both in the Financial Department and by himself; and the Government of India declined to make the proposed modifications because one would be useless and the other would be wrong.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

BURMA ELEPHANTS BILL.

The Hon'ble MR. THORNTON moved that the Reports of the Select Committee on the Bill to prevent the indiscriminate destruction of wild elephants in British Burma, or, to use the amended title proposed by the Committee, the 'Bill for the preservation of wild elephants,' be taken into consideration.

The Bill, it would be remembered, was originally applicable to British Burma only, but its scope and local operation had been enlarged by the Committee and a revised edition, embodying the amendments of the Committee, had been published under the designation of Bill No. II.

All the Local Governments and Administrations affected, or which might be affected, by the measure in its amended form, had accepted its provisions, with the exception of the Madras Government, which had a not unnatural predilection for its own enactment of 1873. As, however, the present Bill, if it became law, would not operate in the Madras Presidency, unless specially extended thereto by the Madras Government, there appeared no necessity to make any alteration in the present Bill on that account. The only alteration of any importance made in Bill No. II by the Select Committee was the insertion of a provision making the previous concurrence of the Governor General in Council necessary before the Local Government could extend the Act to any local area not specified in the first section. The object of the amendment was simply to provide a security that the Act should not be extended to any new local area without mature deliberation.

The Hon'ble MR. EVANS wished to ask a question of the Hon'ble Member in charge of the Bill. He had an impression that there were some few permanently settled zamíndáris in Bengal where elephants were still caught and that the right to catch them had been enjoyed by the zamíndárs before and since the Permanent Settlement. In some cases he was informed that the papers of the Permanent Settlement shewed that the right had been expressly assessed and permanently settled. It was no doubt necessary to pass a Bill to prevent the indiscriminate destruction of wild elephants; but it might be necessary to make some special provision for such cases as he had referred to. He wished to ask whether there was any provision for such cases, and whether the point had been considered by the Select Committee.

The Hon'ble MR. THORNTON said that the possibility of claims, such as those adverted to by Mr. Evans, being put forward had been considered by the Committee, and it was partly for this reason that a wide discretion was allowed to Local Governments in the matter of levying a royalty on elephants; for the Hon'ble Member would perceive that the levy of the impost was not obligatory but might, if deemed necessary or called for, be remitted altogether.

The main object of the Bill was to assert clearly and distinctly on behalf of the State the right to regulate and control the capture and destruction of wild elephants and the right to demand a royalty on elephants killed or captured. But the manner in which, and the extent to which, these rights were to be enforced were advisedly left in great measure to the Executive Government, by whom any claims to exemption made by individuals or classes would, he felt sure, receive the most careful and the most equitable consideration.

The Motion was put and agreed to.

The Hon'ble MR. THORNTON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

CALCUTTA;
The 19th March 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Exd.—J. G.

Government Central Press.—No. 829 L. D.—1-4-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 7th May, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.S.I.
The Hon'ble Sir J. Strachey, G.C.S.I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to amend the law relating to Civil Courts in Oudh. He said that the origin of the proposed legislation was the necessity which had arisen for levelling up the judicial establishments of the "Non-Regulation" to the standard of those maintained in the "Regulation" Provinces.

From the time of the introduction of uniform Codes of Procedure into *all* the Provinces of the Empire, this result must have been foreseen as sooner or later inevitable; for an elaborate Code of Procedure naturally not only promoted an increase of litigation, but also tended in a still more marked degree to enhance the time occupied in the disposal of every contested suit. The Secretary to the Government of the North-Western Provinces, in a letter addressed to the Government of India relating to this measure, wrote:—

"Although Sir George Couper has always been strongly in favour of the non-regulation system, he must admit that, owing to various causes, it is now out of date. It is enough to mention one fact; and that is the number of legal practitioners who practise in our Courts. Formerly, the parties appeared in person, and the Judge had little difficulty in ascertaining the facts of the case. Now, in a great number of suits the parties are represented by barristers or pleaders; it is not only much more difficult to get at the bottom of the case,

but a great deal of time is taken up by the arguments of the lawyers; and it is no exaggeration to say that a case which would formerly have been disposed of in an hour, now often occupies the Court for two days."

Now he (MR. COCKERELL) did not wish it to be inferred from his citation of this passage that he in any way endorsed the suggestion that the action of lawyers in the conduct of cases tended to mystify or obscure the true facts and history thereof; on the contrary, he could say from his own experience that the aid afforded by the presence of lawyers on behalf of the parties in the trial of cases was extremely valuable; but at the same time it was an unquestionable fact that the interposition of those gentlemen did tend to protract the trial of suits in a great degree, and that such interposition had considerably increased of late years, and was one of the direct results of the introduction of a clear and elaborate law of procedure.

It was a somewhat remarkable fact also that in this little Oudh Province the proportion of contested to uncontested suits was far greater than in any other Province; it amounted to about 45 per cent. of the entire number of suits disposed of, whilst (to take, for the sake of comparison, a case in the extreme converse direction) in the Bombay Presidency the ratio of contested to uncontested suits was, according to the latest published statistics, barely one to five. The strain of increased judicial work upon the Oudh officers in their dual capacity of Judges and Revenue Administrators became so great, and the Revenue administration of the Province was found to have suffered from this cause to such a marked extent, that in 1876-77 a Committee of Oudh officers was appointed to look into the whole matter, and devise some means of relief. The measure now to be adopted, if the Bill which he was asking leave to introduce became law, was the outcome of that Committee's report. It was certainly a much more comprehensive measure than that which was adopted to meet a similar state of things in the Panjáb a few years ago, not only because it afforded more substantial relief to the overworked local executive, but because it was likely to be far more satisfactory to the public, inasmuch as it purported to create a judiciary absolutely distinct from, and wholly independent of, that executive, after the model of the system which was in force in the older Provinces.

The "Oudh Judicial Scheme," as it was called, which had received the sanction of the Secretary of State, provided for the entertainment of four District Judges, twelve Subordinate Judges and twenty-two Munsifs, all subject to the control of the existing Judicial Commissioner as a High Court for the trial of all civil suits and appeals. Oudh was at present divided into twelve districts and four Commissioners' divisions, which for revenue and executive purposes would remain unaltered. For the administration of civil justice these divisions

would constitute "districts," with one Judge and an average of about four Subordinate Judges and six Munsifs for each "district." No practical inconvenience was to be anticipated from an arrangement of this kind; for there was nothing new in thus combining two or more revenue districts for civil Court purposes and placing them under a single Judge. There were in the North-Western Provinces, he believed, some six or seven, and in Bengal certainly not less than eight or nine, such combinations, which hitherto had been found to work satisfactorily.

The present Oudh Courts Act, both as regarded the nomenclature of the several Courts and the pecuniary limits of jurisdiction which it assigned to each class of Courts, was not adapted to the proposed change of system; hence fresh legislation had become necessary.

The Bill which, if the permission of the Council was accorded, he desired to introduce, was drawn mainly on the lines of the Bengal Civil Courts Act of 1871, with one or two important exceptions designed to meet the special circumstances of the Oudh Province.

He would, for the present, reserve any detailed account of those exceptions and the reasons for them, as falling properly within the explanation which he would have to submit to the Council when introducing the Bill.

The Motion was put and agreed to.

PANJÁB ADDITIONAL FINANCIAL COMMISSIONER'S BILL.

The Hon'ble Mr. Stokes moved for leave to introduce a Bill to provide for the appointment in the Panjáb of an Additional Financial Commissioner.

He said that the Financial Commissioner of the Panjáb had applied to Government for the assistance of an officer, to be appointed for a limited period, to help him in clearing off the arrears of work which had accumulated in his office during the incumbency of his predecessor, the late much-regretted Mr. Gore Ouseley.

The Panjáb Land-Revenue Act, 1871, however, only provided for the appointment of one Financial Commissioner, and appeared to contemplate that all the duties which it assigned to the Financial Commissioner should be performed by that one officer in person. Further, it might be a question whether the functions of the Financial Commissioner under certain other enactments could be devolved upon any other officer. Hence the necessity for legislation.

The present Bill would authorize the Local Government, with the previous sanction of the Governor General in Council, to appoint an Additional Financial

Commissioner to perform such portion of the work of the Financial Commissioner, under any enactment for the time being in force, as that officer might choose to assign to him.

The Motion was put and agreed to.

MR. STOKES then introduced the Bill. The Legislative Department had been so recently instructed to prepare it that there had been no time to print it and to circulate it in the usual way to Hon'ble Members. It had, however, been carefully settled in consultation with the Hon'ble Members (Sir A. Arbuthnot and Mr. Rivers Thompson) who were respectively in charge of the Home and Revenue Departments; and his hon'ble friend the Financial Member (*frugi dicatur*, as Horace would say) would be glad to hear that the Bill was only a temporary measure, and would expire on the 30th September, 1879. He (MR. STOKES) would now read the Bill to the Council :—

"A BILL

TO

Provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

Preamble.

"Whereas it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows :—

Short title.

Commencement.

"1. This Act may be called 'The Panjáb Additional Financial Commissioner's Act, 1879': and it shall come into force at once.

Appointment of Additional Financial Commissioner.

"2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

"Every person so appointed shall hold his office during the pleasure of the Governor General in Council :

"Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

Business transferred by Financial Commissioner to be disposed of by Additional Financial Commissioner.

"3. Every Additional Financial Commissioner, appointed under section two, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter pending before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time to time, transfer to him for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

"The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him."

Power to withdraw cases so transferred.

The Hon'ble MR. STOKES applied to the President to suspend the Rules for the Conduct of Business. The matter was one of great urgency ; the arrears in the office of the Financial Commissioner were exceedingly large, and the public interest required that not a day should be lost in clearing them off.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

TRADE-MARKS BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill for the registration of Trade-marks. He said that this Bill had been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies had called the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which had been held by the High Court of Bombay not to apply to India), and stated that it seemed desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

The Bill was nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seemed desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts was merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England, and thus to give the Indian Courts the guidance of the decisions of the English tribunals on the corresponding provisions of the English enactment.

The Motion was put and agreed to.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20. He said that section 20 of the Cantonments Act (XXII of 1864) declared that breaches of the Cantonment rules should be triable by the Cantonment Magistrate where there was such an officer, and empowered the Local Government to invest any other person with power to try such breaches. The section then declared that the Magistrate of the District should have no control over the Cantonment Magistrate or any other person so invested. Now, in a case tried some months ago by an officer specially invested under section 20 with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt (which, if MR. STOKES might venture to say so, was perfectly well founded) as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurred as to the need of such a power, and the present Bill had been drafted to provide it.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

PLEADERS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Colvin be added to the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865.

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. THOMPSON moved that the Hon'ble Messrs. Cockerell and Colvin be added to the Select Committee on the Bill to appoint Commissioners for the Port of Rangoon.

The Motion was put and agreed to.

N. W. P. LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873.

OUDH LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN also presented the Report of the Select Committee on the Bill to amend the Oudh Land-Revenue Act, 1876.

The Council adjourned to Wednesday, the 21st May, 1879.

SIMLA;
The 7th May, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. H. Press, Simla.—No. 120, L. D.—14-5-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 21st May, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir J. Strachey, G.C.S.I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

N. W. P. LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-Revenue Act, 1873 be taken into consideration.

He said that the Bill had been a good deal enlarged since it had first been introduced in Council. At that time it contained only three amendments of the present Act. The principal of these was intended to deprive persons whose estates might be under the management of the Court of Wards of power to charge or alienate those estates. Of the other two amendments, one was little more than an improvement in drafting, which required no notice. The last was more important. It was an addition to section 29 of the Act which was being amended, and it declared that charges incurred in the preparation of village-maps should be deemed to be charges within the meaning of that section. The effect of this was to make the village-map a part of the patwáris' records. It had been doubted whether village-maps could, under the wording of the Act as it stands, be properly treated as part of the patwáris' records. Whatever the proper interpretation of the Act might be, in practice they had for a great

many years past been so treated. In 1854, and again in 1856, the Local Government expressly declared that to make a map was part of a patwárí's ordinary duty; and, as a matter of fact, a great part of the existing village-maps in the temporarily-settled districts of the North-Western Provinces were, according to those orders, prepared by patwárís, or by substitutes for whom they paid. Again, in the latest rules prescribing the duties to be performed by a patwárí which have been issued by the local Board of Revenue, it was declared that a patwárí shall make any survey which may be required; and the Collector was authorized, if necessary, to appoint an establishment to assist him, which establishment might be paid out of the surplus of the patwárí fund. The truth was that these village-maps were indispensable if the patwárís' records were to be of any use at all, and if the provisions of the Act in respect of these were not to remain a dead-letter. Those records, apart from the map, merely gave a list of the names of the different persons who held shares in the village and of the fields which they possessed, showing the dimensions and area of each. Every one of those fields bore a distinguishing number in the list, which it also bore in the village-map; and, by turning to the map, any field that was wanted could be found at once. Without it, these distinguishing numbers were meaningless, and the patwárí's record scarcely of more service than an index to an atlas would be without its corresponding maps. It gave a list of fields, but furnished no clue by which they could be found. In short, he did not see how there could be any such thing as a "proper supervision, maintenance and correction of patwárís' records," which the Act enjoined, unless the village-map were recognized to be a part of them. Under these circumstances, it was highly expedient to remove any doubts which might exist upon the subject; and, by the Bill as now framed, village-maps were declared to form a part of the village-records.

The next point in the Bill which required notice was the provision in the same section that the patwárís' rate—the rate, that was to say, by which the village-accountants were paid—should be credited to a provincial fund. A good deal of discussion had taken place, at the time when the present Act was passed, between those who wished that this rate should be thrown into a general fund and those who maintained that a separate account ought to be kept for each village. It was argued by those who held the latter view that the patwárí was a village-servant, and ought to be paid by the village-owners. On the other side, it was contended that the village-accountant had gradually been transformed into a servant of the State as regards many of his duties, and that he was no longer a mere private servant; and that the Government in making this change had incurred responsibilities towards the patwárís, of which one of the first was to see that the men were adequately and regularly paid. What he had just said gave the substance of the two con-

flicting opinions. It was unnecessary to take up the time of the Council with the arguments of either side in detail, because, whatever the merits of the controversy, it had been found in practice that effect could not be given everywhere to the plan of making each patwárí dependent for his pay upon his own circle only. There were some parts of the country so poor that the full legal rate of three per cent. upon the annual value of an estate did not provide the patwárís with better wages than those of a day-labourer. Unfortunately, it also happened that the duties of a patwárí in these poor circles were commonly heavier than they were on a rich estate, where the rate provided a good income. In order to obtain men fit for the post, it was necessary in such places to raise the salary above the amount yielded by the legal rate; and, as the individual villages could not out of their small rental supply the money necessary for this purpose, it was obvious that a fund which was composed of the surplus of richer circles could more properly contribute it than the proceeds of any general taxation.

Another alteration with respect to the patwárís' rate was contained in section 5 of the Bill. It had been found that in some districts the old rate according to which the patwárís had hitherto been paid was in excess of that allowed by the present Act. It would be very inconvenient—indeed, sometimes impossible—to reduce the rate so paid to three per cent. on the annual value of the estate, which was the highest contribution that could be levied under the Act, because, if this were done, the patwárí in many cases would be very inadequately provided for, and arrangements which had been in force for years past would be disturbed. Accordingly, it was proposed that, in those districts where the facts were as he had described, the rate hitherto levied should for the future be deemed to be the legal rate. The districts referred to by him were those of Lalitpur, Dehra and Budaun.

He proceeded now to notice the changes which were proposed in section 66 of the present Act.

The first of these was the addition to its second clause of a sentence which declared that no list such as is spoken of in it shall be altered or added to during the currency of a settlement. This was only a change of form, not of substance. The Committee were satisfied that this was the intention of section 66 as it now stands. It declared that a list of certain cesses shall, if generally or specially sanctioned by the Local Government, be made by the Settlement-officer, and that no such cess which is not included in that list shall be enforced in any Court. It further empowered the Local Government *from time to time* to impose certain conditions on the collection of these cesses; but it was plain from the wording that it was not contemplated that the list itself should be altered during the currency of a settlement. It

appeared, however, that this had not always been so understood. The Committee accordingly recommended the addition of a sentence to clause 2, section 66, which would place the intention of the Act beyond the possibility of doubt.

The second addition to section 66 empowered the Governor General in Council to declare in cases of doubt what shall be deemed to be a cess within the meaning of the section. This power would provide for the removal of any doubts, if they should arise, about the cesses which do or do not fall within the meaning of the section. The Committee, as he had observed before, did not think that any such power could properly be exercised during the currency of a settlement, and had limited it to the time during which a settlement was in progress.

The next section of the Bill which appeared to call for notice was the one which amended section 74 of the Act, and empowered the Settlement-officer in certain tracts to refuse commutation from rents in kind to rents in money. When the Act of 1873 was passed, it was believed that, by enabling the tenants to convert all rents which were payable in produce into rents payable in cash, a benefit would be conferred upon them. The effect of giving them that power had, however, in some parts of the country proved the reverse of a boon. It was, indeed, a doubtful advantage for tenants to pay in money instead of in grain, in places where the crops were precarious. Where they paid a fixed portion of the produce, the demand from them varied according to the out-turn of the harvest; but no such adaptation of the landlord's claim to circumstances was to be looked for in the case of fixed cash rents. Now, there were some tracts in the North-Western Provinces where the tenants at the time of settlement had applied for cash rents and had obtained them very much against the landlords' wishes. It so happened that, after the rents had been so commuted, there came two or three years of very bad harvests. The zamíndárs claimed their full rents. The tenants, they said, had wished for payments in money, and now they must abide by them. The cultivators had neither the money nor the means of raising it, and were obliged to execute engagements to pay at some future time which they could never fulfil. Mischief of this kind had occurred in more than one place from making the commutation of rents compulsory on the application of either party. It was proposed, therefore, to add a clause to section 74, enabling the Settlement-officer to refuse commutation, under certain circumstances, in such tracts as the Local Government thought fit to bring within the operation of the clause.

A change of some importance was proposed in Section 157. The Local Government were anxious that the power to transfer a pattí from one landowner to another should be given to the Collector. At present it was vested

in the Board of Revenue. It was found, however, that in some parts of the country the present procedure, by which the Collector had to report to the Commissioner, and the Commissioner to report to the Board, caused a delay which the Local Government considered mischievous. It was, therefore, proposed to make the procedure quicker and more summary by vesting the power of transferring shares which do not exceed 50 rupees in the Collector. This power would be subject to the sanction of the Commissioner, and to revision, if necessary, by the Board. The Committee had not thought it right to exempt it from the general supervision and control of the Board; but it was not anticipated that they would interfere with completed transfers, except under extraordinary circumstances.

There was only one other point that required notice. Opportunity had been taken in amending the North-Western Provinces Local Rates Act, 1878, to extend the definition of "tenant" so as to include lessees and under-proprietors who did not themselves use or occupy the land. It was not an uncommon practice in many parts of the country for a landowner to grant perpetual leases of a portion of his estate, on the payment of a fixed rent annually for ever. It had been held that such a perpetual lessee was neither a landlord nor a tenant within the meaning of the Act, and that the only course left for the lessor, who had to pay the whole rate, was to recover the tenants' moiety of it, if he could, from the different users or occupiers of the land. It was proposed to remedy this defect by altering the definition of the word "tenants" in the North-Western Provinces Local Rates Act in the manner which he had described.

The Motion was put and agreed to.

The Hon'ble Mr. Colvin then moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA COAST-LIGHTS BILL.

The Hon'ble Mr. Stokes moved that the Report of the Select Committee on the Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal be taken into consideration. He said that the Committee had made three amendments in the substance of the measure, namely, first, by omitting the explanation to section 9, and thus relieving a ship's agent of liability for the master's or owner's refusal to pay dues payable under the proposed Act; secondly, by adding a section requiring the Government to publish annually a statement of the receipts on account of coast-light dues and of the expenditure on the lights; and thirdly, by substituting for "Port Blair" in both the places in which it occurred in the schedule the words

"any Port in the Andaman and Nicobar Islands." The first of these amendments had been made at the suggestion of the Bengal Chamber of Commerce, who justly observed that the power to distrain and sell the vessel was sufficient. The second had been made with a view to providing those who paid the dues with the means of judging whether the rates from time to time fixed were reasonable or not; and the third was necessitated by the development of a trade in cocoanuts carried on by Native vessels plying between Burma and the Nicobars—vessels which undoubtedly benefited by some of the lights to which the Bill referred. The Committee had also made some improvements in the wording and arrangement of the Bill.

The Bill had been approved by the five Local Governments concerned; but the Bengal Chamber of Commerce had taken exception to the proposal to raise the coast-light dues, on the ground that, "as the calculations of dues sufficient for the purposes covered by the Act (XIII of 1867) were made at and for a period when the tonnage in respect of which the dues were payable was much smaller than at the present time, it is difficult to understand how those estimates could have been framed so inaccurately as to render it necessary at this moment of largely increased revenue to call for an addition of fifty per cent.; and how, while the revenue during intervening years has been progressive, the expenditure has been progressive also." They requested that, before any additional rate was imposed, they might be furnished with fuller explanation than that given in the Statement of Objects and Reasons attached to the Bill, and with the requisite accounts to justify the addition which it was proposed to make to the existing tax on tonnage.

It was easy to give the fuller explanation desired by the Chamber. The particulars of certain expenditure had not yet been received from England, and the entire capital expended on the lights up to date could not therefore be ascertained. But the accounts, so far as they went, showed Rs. 21,07,733 to have been expended. (Mr. Stokes took these figures, as well as the others which he would quote, from an official Note drawn up last October by Mr. C. J. Lyall, the able and accurate Under-Secretary to the Revenue Department). The annual interest on this sum, at 4½ per cent., was Rs. 94,848. The average cost of maintenance for the six years ending 1877-78 had been Rs. 53,277. This was exclusive of the Oyster Reef Light, which appeared only in the two last of these years. If we included the average cost of the Oyster Reef Light for the two years, the average cost of maintaining all the lights for future years might be estimated at Rs. 63,177. We thus had the annual charge (including interest on capital) equal, roughly speaking, to Rs. 1,58,000. Now, the total income from the light-dues for the six years ending 1877-78 had been Rs. 4,74,000, giving an average of only Rs. 79,000 per annum. It was true that this income

had been rapidly rising. It had in fact increased in the six years under review by about fifty per cent., and in the year 1877-78 was as high as Rs. 97,000 or Rs. 98,000; but (omitting deficits for past years) it was still so very far short of the annual charge as above estimated, that even the increase of the rate by fifty per cent. which was now proposed would not for some time to come cover that charge. Further, assuming against all probability that the income would go on increasing at the same rate as hitherto, it should be remembered that, if the Krishna Shoal Light-house was to be reconstructed, a considerable addition would be made to the annual charge, even though we adopted the suggestion of the Chamber as to distributing the cost over a series of years.

It must be admitted that the author of the Act of 1867—the late Sir William Grey—in his anxiety to keep the dues as low as possible, pitched the rate below what it ought to have been. The Government of India, however bountifully disposed, must not continue to be, as Cicero said somewhere, *benignior quam res patitur*,—more generous than its means allowed.

MR. STOKES observed, in conclusion, that section 6 of the Bill empowered the Government to reduce the rate whenever the lights had begun to pay their way.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

OUDH LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend the Oudh Land-Revenue Act, 1876, be taken into consideration. He said that the Bill had been altered in shape a good deal since it was first introduced into the Council. It had originally been a Bill to amend the Oudh Land-Revenue Act, but had subsequently been turned into a Bill for the recovery of certain advances made to landholders. The practice of giving *takkávi*—that was to say, advances for agricultural purposes to landholders—existed before our time in India, and had been continued by the British Government. These advances used to be given to landholders only, and were made recoverable in the same way as an arrear of land-revenue by a Regulation of 1803. At that time the objects for which those advances could be made were undefined; but they were never given, he believed, except for agricultural purposes. In 1871 the Land Improvement Act was passed. By that Act agricultural advances made for certain particular objects were dealt with, and the privilege of receiving them was extended from landholders to tenants. Nothing was said

about advances for any other agricultural objects. But, in 1873, when the Land-Revenue Act for the North-Western Provinces was passed, the Regulation of 1803 which had been mentioned was repealed. Since that time there had been no law regarding any advances but those made under the Land Improvement Act. If the Local Government chose to make such advances, there was nothing that he knew of to prevent it; but it would not be able to recover them except by going into the Civil Court in every case where payment was delayed or withheld. This might be, and often was, very inconvenient. There were occasions on which it was most necessary to make such advances—for the purchase of seed and cattle, for instance, after a famine. As the law stood at present, however, advances so made could not be recovered in any way except by a civil suit. This being so, there was danger that either the money would not be advanced at all from the doubts that would exist as to its recovery, or, if it were lent notwithstanding those doubts, that much of it might be lost. To remedy this, when the North-Western Provinces Land-Revenue Act was amended, a section had originally been inserted in the Bill declaring that all advances for agricultural purposes should be recoverable as arrears of land-revenue. In order to assimilate the practice in Oudh to that proposed for the North-Western Provinces, the present measure had been introduced in its first shape of a Bill to amend the Oudh Land-Revenue Act. But the Local Government expressed a wish that the Bill should take the form of a general measure for the recovery of *takkávi*. Upon this, the opportunity was taken to ask other Local Governments whether it was not desirable that such a Bill, if passed, should be made applicable to them also. The result was that all the Provinces usually comprised in the term "Northern India," *i.e.*, the Panjáb, the Central Provinces, Assam and Ajmer, as well as the North-Western Provinces and Oudh, had agreed to accept the measure; and it had been extended to them accordingly. In its present shape, therefore, the Bill provided for advances made to owners and occupiers of land for agricultural objects other than those specified in the Land Improvement Act, and declared that such advances should be recoverable from the persons receiving them or from their sureties in the same way as arrears of land-revenue.

In addition to this, the Bill imposed a condition upon the granting of such advances. In order to bring them within the operation of the law which it was proposed to enact, the Bill provided that the advances must have been made in accordance with rules to be framed by the Local Government and sanctioned by the Governor General in Council. It had been objected—and the Committee thought with reason—that it was not expedient that the power of making agricultural advances which could be recovered by such a sharp and summary process as that for the realization of arrears of revenue should be left

vague and unrestricted. In the rules required by the Bill, the objects for which such loans might be made could, from time to time, be defined, and their conditions clearly specified, so that all persons interested would have the means of knowing when and how they could obtain an advance, and would also be informed of the liabilities which they incurred by accepting it.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRADE-MARKS BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the registration of trade-marks, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Cockerell and Hope and the Mover. He said that when he had obtained leave to introduce this Bill, he had explained the circumstances under which it had been prepared, and stated that it was nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the two Statutes which regulated the registration of trade-marks in England. He had now only to say that the Bill provided for the appointment of a Registrar and the registration of trade-marks, and enacted that, after a certain fixed date, no suit should be brought for the infringement of a trade-mark, unless such trade-mark was registered in accordance with the provisions of the Bill. It further defined the essential particulars of which a trade-mark must hereafter consist; those particulars were as follows:—

"(*a*) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner, or

(*b*) a written signature or copy of a written signature of an individual or firm, or

(*c*) a distinctive device, mark, heading, label or ticket:

provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals:

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act."

The other provisions of the Bill were subsidiary to these, and the only one of them calling for notice here was that by which the High Court at Fort William was appointed the Court for the purposes of the Act. As it was understood that the registry-office would be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions were registered), that Court was obviously the most convenient one to appoint.

The Bill would of course be improved by the criticisms which he hoped it would receive from the Local Governments and the mercantile community. But, even if passed in its present form, he thought it would be a useful piece of legislation. It would, in conjunction with the 18th chapter of the Penal Code, help to give effect to the sound general principle which Lord Langdale, in *Perry* v. *Truefitt*, had expressed thus: "A man is not to sell his own goods under the pretence that they are the goods of another man; he cannot be permitted to practise such a deception, nor to use the means which contribute to that end. He cannot, therefore, be allowed to use names, marks, letters or other *indicia* by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person." Moreover, the protection of trade-marks was, like the quality of mercy, "twice blessed": it was, in other words, doubly beneficial: it benefited the public, because it enabled them to buy with a reasonable certainty that they were getting what they asked for, and it benefited the manufacturer, because it secured to him the custom which he deserved, and which was intended for him.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to amend the law relating to Civil Courts in Oudh, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Stokes, Hope and Colvin and the Mover, with instructions to report in four weeks. He said that the Bill, in effect, reproduced for application to the Oudh Province most of the provisions of Act VI of 1871, the Bengal Civil Courts Act.

As a separate subordinate judiciary, which from the District Court downwards was constructed after the model of that at present existing in Bengal and the North-Western Provinces, was to be established in Oudh, it seemed clearly right that the law relating to Civil Courts in the latter Province should be assimilated as much as possible to the law on this subject in force in the former Provinces.

The Bill, however, provided for one important distinction from the Bengal Act in regard to the original jurisdiction of the Courts of Subordinate Judges. Such Courts in Bengal and the North-Western Provinces exercised an unlimited

jurisdiction in respect of the amount or value of the property in dispute in any case; whereas in Oudh it was proposed to limit the jurisdiction of Sub-Judges to cases in which the amount or value of the property forming the subject of litigation did not exceed Rs. 10,000.

Many cogent reasons could be assigned for the proposed restriction, but it would be sufficient here to mention two of these:—

1st.—It was desirable that suits of great importance, as involving an unusually heavy pecuniary stake, should be tried by the strongest Courts of original jurisdiction available; but where concurrent jurisdiction was given to two classes of Courts in respect of such suits, then, under the operation of the rules of the Civil Procedure Code, the result was that these suits were necessarily instituted, and generally tried by the lower class of Courts; for, although the Code conferred upon a District Court the power of withdrawing suits from any Subordinate Court and trying them itself, yet in practice it was found that this power was exercised very sparingly, in special circumstances, such as on the application of a party, and without any particular reference to the amount or value involved in the suit to be withdrawn.

2nd.—It was doubtful whether the public would have such confidence in these new Sub-Judges' Courts as to be willing to intrust cases involving an unusually heavy pecuniary stake to the adjudication of such Judges, some of whom at least (for the new posts would to some extent be filled by the late Assistant and Extra Assistant Commissioners) had hitherto exercised jurisdiction only in respect of suits in which the amount or value of the property in dispute did not exceed Rs. 5,000.

Indeed, strong representations had been made, from non-official quarters, too, to the effect that the public in Oudh would not have such confidence, and that it was consequently expedient to place some limitation as regards the pecuniary amount upon the jurisdiction to be exercised by these Judges.

There was no reason, moreover, to apprehend that the new "District Courts" in Oudh would have insufficient time for the trial and disposal of suits involving an amount or value in excess of Rs. 10,000; for not many such suits were instituted in the Oudh Courts: during the three years from 1875 to 1877 inclusive, the annual average number of such institutions did not exceed fifty-six, which, distributed amongst the four District Courts, gave an average of fourteen cases only to be disposed of by each Judge. It must be

remembered also that these new District Judges would not, for some time at least, have the criminal work, which devolved upon the District Courts of the older Provinces.

Whilst the Courts of original jurisdiction in Oudh were, under the new scheme, to be entirely reconstructed, the highest Appellate Court (Judicial Commissioner's) would remain as heretofore; hence it was proposed to retain the special provisions of the law now in force in that Province in regard to second appeals.

In one respect this law was peculiar to Oudh; for in no other Province was an absolute finality accorded to the substantially concurrent decisions of the Appellate Court and the Court of first instance. The other special provision, allowing a second appeal on the facts of a case, when the decision of the first Appellate Court reversed or materially modified the order of the Court of first instance, was also in force in the Panjáb. Both these enactments were reported to have worked well in Oudh, and the twenty-first section of the Bill had consequently been drawn so as to provide for their retention.

Some provisions of the Bengal Courts Act had been omitted, as, for instance, the power of appointing a Munsif, temporarily, on the sudden occurrence of a vacancy in that office. The Local Government was averse to giving this power to the new District Judges in Oudh, and proposed to give it to the Judicial Commissioners, but it was thought that such an arrangement would fail to secure the object of this provision for temporary appointments, *i.e.*, the avoidance of delay in the filling up of a vacancy; for it would take nearly as long a time to obtain a fresh appointment by the Judicial Commissioner, who, unlike the District Judge, did not ordinarily reside in the district where the vacancy would occur, as an appointment to be made by the Local Government. For these reasons, it seemed best to abandon this provision. Probably, in any case, it would be unnecessary in these days of more rapid communications.

Through inadvertence, the converse provision of the Bengal Act regarding the suspension of Munsifs by District Judges, which ought equally to have been omitted, had been inserted in the Bill; it would be for the Select Committee to which the Bill might be referred to determine whether the considerations which led the Local Government to disapprove of giving the power of appointment of Munsifs to the District Judges did not apply with greater force to this provision enabling them to suspend such officers.

It only remained for him (MR. COCKERELL) to draw attentionto the two last sections of the Bill, which had been framed to provide for the rather complicated questions which would arise out of the abolition, from the date of the

new law coming into force, of one set of Courts, and their immediate replacement by another set with totally different designations and limits of jurisdiction. It was thought that these provisions would be found to effect all that was needed.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Cockerell and Colvin and himself. He said that the Bill was one of extreme simplicity and brevity. The effect of it was that in trials for breaches of Cantonment Rules there would be no appeal, but the Cantonment Magistrate trying the case would, for the purposes of the twenty-second chapter of the Code of Criminal Procedure, be subordinate to the High Court, the Court of Session and the District Magistrate.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble Mr. STOKES also moved that the Hon'ble Messrs. Hope and Colvin be added to the Select Committee on the Bill to amend the Code of Civil Procedure

The Motion was put and agreed to.

The Council adjourned to Thursday, the 5th June, 1879.

SIMLA;
The 21st May, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B Press, Simla.—No. 145, L. D.—2-6-79—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 5th June, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir J. Strachey, G C S I.
General the Hon'ble Sir E. B. Johnson, R.A., K C.B
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C S I.
The Hon'ble F R Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I
The Hon'ble T. C Hope, C.S I.
The Hon'ble B. W. Colvin.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons. He said that, as the law of British India at this moment stood, there was, speaking generally, no means of conferring upon any one a complete and conclusive title as representative of the estate of a deceased Hindú, Muhammadan or Buddhist or other person exempt from the operation of the Indian Succession Act.

The Hindú Wills Act was at present limited in its operation to the Presidency-towns and Lower Bengal; and, even if the proposal to extend it to other parts of British India, now under consideration of the Local Governments, was carried out, it would still only apply to cases of testamentary succession among Hindús; and outside the Presidency-towns there would be no clear power to grant letters of administration in the case of Hindús, Muhammadans and Buddhists dying intestate.

The grant of a certificate under Act XXVII of 1860 made the person who had obtained it a representative only for certain very limited purposes;

that was to say, for the recovery of debts, the receipt of interest and dividends on Government securities, bank-shares and shares in Public Companies, and the 'negotiation' of such securities and shares And, though in the Bombay Presidency a certificate purporting to confer larger powers might be obtained under Regulation VIII of 1827, it was by no means clear what the status of the holder of such a certificate precisely was.

In the Presidency-towns probates of the wills and letters of administration to the estates of deceased Natives could be granted under the Supreme Court Charters in cases to which the Succession Act and the Hindú Wills Act did not apply; but the representative status conferred by such grants fell far short of that conferred by similar grants in the case of deceased European British subjects Thus, in 1867, in *Sharo Bibí* v. *Baldeo Dás* (1 Beng. Law Reports, Or Jur. 24), the late Mr. Justice Norman held that a Hindú executor took nothing from any grant of the Court "His title," said that learned Judge, "is founded solely and simply on the will of the testator, considered as an instrument of gift. Except for the purposes of evidence, the will of a Hindú does not require probate . . . As against those who get the probate or oppose the grant of it, [it] is no doubt binding; as against parties cited it is evidence; but it has no greater effect than the ordinary decree in a Civil Court against persons who have no means of appearing in the suit or right to dispute the grant."

From this state of things much trouble and litigation at times resulted. The heirs might be very numerous; their interests might differ in degree; some of them might be minors or otherwise incapacitated; others might be residing at a distance; the titles of some might be disputed; the settlement of claims against the estate might thus be a matter of endless complication; the making of a satisfactory title to any portion of it which it might be necessary to sell might be impossible. Furthermore, a Native's will, not requiring to be proved, need not be deposited for safe custody The resulting opportunities for forgery and fraudulent alteration were obvious. Nor could a Native executor be compelled to exhibit an inventory or account of his testator's estate except by the tedious, expensive and hazardous process of a lawsuit The consequence (as Mr Montriou had observed in his note to *In the goods of Bibí Muttra*, Morton's Decisions, second edition, p. 262), was that, when the estate was too small to bear the costs of the suit, women, children and absentees had no adequate check on the executor, and at any distance of time it was difficult to fix him with the possession of moveable, and sometimes even of immoveable, property.

The necessity of devising some means of removing these difficulties was brought to the notice of the Government of India some time ago by Mr. Broughton, then Administrator General of Bengal, and now a Judge of the

Calcutta High Court; and a Bill drafted by him was circulated for the opinions of local authorities. That Bill, while guarding against any interference with the succession laws of the Hindús, Muhammadans and Buddhists, went in effect to apply to them the provisions of the Indian Succession Act relating to probate and administration, and, amongst others, those provisions which make the grant of probate or letters of administration a condition precedent to the establishment of any right derived by succession from a deceased person.

The reports of the local authorities had now been received, and their purport might be briefly described by saying that, while there was a considerable body of opinion in favour of providing the means of obtaining probate of the will or letters of administration to the estate of any deceased person when those interested desired to do so, the proposal to insist on probate or letters of administration as essential in all cases had been generally condemned, as tending to impose upon a multitude of poor and ignorant people in cases where there was no difficulty or dispute an unnecessary amount of trouble and expense.

The Bill had been drawn on the lines thus indicated. It applied to the estates of all persons not at present governed by the Indian Succession Act the portions of that Act relating to the grant of probate and administration and the powers, duties and procedure of executors and administrators, omitting, however, those sections (187 and 190) which made it compulsory to obtain probate or administration. He (MR. STOKES) believed that as soon as the Bill was understood by the people, its necessary effect in quieting titles and obviating litigation as to the ownership of property would induce them to avail themselves largely of its provisions. One result of this would be that they would voluntarily tax themselves to the same extent that all persons whose property was dealt with under the Succession Act or Hindú Wills Act were now taxed; that was to say, property covered by the grant and exceeding 1,000 rupees in amount or value would pay a Court-fee of two per cent., but property not exceeding that sum in amount or value would be exempt. People would thus voluntarily and usefully pay to the public treasury a part of the money which they now voluntarily and often uselessly spent in litigation, and the problem of levying a tax on successions to wealthy Natives' estates would thus, to some extent, be solved without hardship to the tax-payer or trouble to the Government.

The Motion was put and agreed to.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

He said this was a sister measure to that which the Council had just given him leave to introduce. The Indian Succession Act as originally framed by the Law Commissioners empowered the District Judge to appoint judicial officers to act for him as delegates to grant probates and letters of administration in non-contentious cases; much in the same way as the District Registrars appointed under the Court of Probate Act, 1857, did in England; but the provisions relating to this matter were struck out of the Bill by the Select Committee, partly because they were thought unnecessary, and partly because it was feared that the power which was to be conferred on District Judges would give rise to abuse.

If, however, the Bill to provide for granting probate of the wills and administration to the estates of persons now exempted from the operation of the Indian Succession Act should become law, it was probable that the business of granting probate and administration would increase to such an extent that the District Judges would be unable to dispose of it without assistance.

The present Bill had accordingly been framed with a view to replacing in the Succession Act, with some slight modifications in point of form, the sections removed from it by the Select Committee; but, in order to avoid as far as possible the danger of abuse apprehended by the Select Committee, the power of appointing the delegates had been vested not in the District Judges, but in the High Courts, and its exercise had in the case of High Courts not established by Royal Charter been made subject to the previous sanction of the Local Government.

The Motion was put and agreed to.

BOMBAY INDEBTED AGRICULTURISTS RELIEF BILL.

The Hon'ble Mr. Hope moved for leave to introduce a Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay. He said:—"The Council are already aware that during the monsoon of 1875 agrarian outrages of a serious nature took place in certain districts of the Dekkhan forming a part of the Bombay Presidency; that a Commission, appointed by Government, reported very fully upon the causes of these outrages, and the remedial measures they thought desirable; that the Government of Bombay in April, 1877, before Sir Philip Wodehouse's departure, submitted their general views upon the question to the Government of India; and finally, that Sir Richard Temple's Government sent up in January 1878 the first definite proposals for meeting the case by legislation. The origin, nature and causes of the difficulty, and the various proposals for its removal, were explained so fully and clearly by my hon'ble friend Mr. Cockerell in his speech of the 20th June last, that it is not necessary for me to go over any part of the ground again, at least on the present occasion.

"The course of procedure at that time considered desirable was that some of the Bombay Government's proposals should be dealt with in this Council and others in that of Bombay. Leave to introduce Bills was accordingly granted by this Council to Mr. Cockerell on the date already mentioned, and by the Bombay Legislative Council to Mr. Ashburner on September 13th, 1878. It happened, however, that, during the discussion of the details of the measures thus decided on, a telegram from the Secretary of State was received on December 3rd, requesting that further definite action might be postponed pending the arrival of a despatch he was about to send. The despatch arrived towards the end of January last, and showed that the Secretary of State, while approving of the proposals of the Bombay Government, considered that they should be supplemented by further provisions for increasing the efficiency of the Courts of justice, and also that the subject could be better dealt with by one 'comprehensive measure' than by two passed in different legislatures.

"The Government of India, concurring in these views, and finding that, owing to various Acts passed in the Governor General's Council being affected, that Council alone was competent to enact one measure disposing of the whole subject, entrusted to me the duty of conferring with the Government of Bombay as to the provisions which such a measure should embrace, and of introducing into this Council the Bill as finally determined upon. I accordingly visited Bombay in April last, and the result was that a Bill was framed in full consultation with me, and proposed by the Government of Bombay to the Government of India for adoption. The Government of India have, I am glad to say, entirely accepted, in their executive capacity, the main principles and policy of this Bill, which are also, I believe, in conformity with the views of the Secretary of State. The two Bills for which leave has been already granted need not now, therefore, be proceeded with; and it remains for me to ask of this Council leave to introduce the new Bill, reserving all detailed explanations for the occasion of its introduction."

The Motion was put and agreed to.

BENARES FAMILY DOMAINS BILL.

The Hon'ble Mr. Colvin moved for leave to introduce a Bill to amend Bengal Regulation VII of 1828. He said that the object of the Bill which he desired to introduce could be explained in a few words. A short time after the transfer of the sovereignty of Benares from the Nawáb of Oudh to the East India Company, an agreement was made with the Rájá of that time for the purpose of introducing into the Province of Benares the same system of judicial and revenue-administration as had been established in 1793 in the Provinces of Bengal, Bihár and Orissa. By that agreement the entire administration of

the Province of Benares was transferred, upon certain conditions, to the British Government, with the exception of a reservation which was made in favour of the Rájá in respect of one portion of it. The portion so excepted comprised the territories which were generally known as the Benares Family Domains. These Family Domains, which were the Mahárájá's private and personal property, consisted of three parganas—that of Kaswár Rájá in the District of Benares, held at ordinary or full zamíndárí rates, and of two parganas, Bhadohi and Khera Mangror, in the District of Mirzapur, the first of which was held at half-revenue rates, and the second free of all revenue. Their total area was, in round figures, 1,000 square miles; the population about 400,000, and the revenue paid for them nearly three lákhs of rupees. When the administration of the rest of the Province was transferred, the decision of causes relating to the revenue and of certain other claims arising out of land in these parganas was reserved to the Rájá, subject to the supervision and control of the Collector. The special stipulation contained in the agreement on this subject ran as follows:—

"In case of complaints relative to revenue causes or charity ground, &c., being preferred to the Huzoor (*i. e.*, the English Government) by any parties residing within the jagheer and altumgah, &c., the personal or private lands of Rajah Muheep Narain Singh, the inquiry thereinto shall be made in like manner as such cases were amicably conducted between Mr. Duncan and the Rájah; that is, that since the gentleman holding the station of Collector will have more concern with such matters than the other gentlemen, the rule shall be that, with the privity and ascertainment of the said Collector (who is to have regard to the honour and dignity of the said Rajah), such causes are to be settled through the channel of the said Rajah, or of the officers of the said Rajah's cutcherry; it being at the same time understood and provided that, as it is a duty incumbent on the Hon'ble Company's Government to distribute and ensure the attainment of justice to all the inhabitants of Benares, should it so happen that, after referring such complaints to the Rajah or to his officers in the cutcherry, the contentment of the parties complaining and aggrieved shall not be obtained, the Rajah shall relative to the adjustment of such causes listen to and approve of the suggestions and advice of the Collector, in like manner as hath been practised in the time of Mr. Duncan. And it is also incumbent on the said Collector, in all proper and just cases, to show the utmost attention possible to the Rajah's accommodation, and to hold in view the maintenance of his honour and dignity, such being entirely consistent with the wishes of Government; and if (which God forbid!) any such subject should arise as cannot be settled between the said Collector and the Rajah aforesaid, the decision in such case shall depend on the Governor General in Council."

It was evident that the success of such an agreement as this depended largely upon the mutual good-will and forbearance of the parties who carried it out. It was possible—in the commencement of our rule, and with Agents like Mr. Duncan, who possessed great influence and popularity—that such a plan may for a time have worked successfully; but it was easy to predict that powers and duties which were so vaguely defined must either soon fall into disuse and be neglected, or, if the attempt to maintain them in force were

prolonged, that the first serious difference of opinion would bring their working to a dead lock. It appears, from the history of the experiment, that it was the first of these two probable causes of failure which was fatal to it. It was found, after a very short experience, that the conditions of the agreement were quite insufficient to protect the subjects of the Rájá from oppression. Some time elapsed before any effective measures were taken for their protection; but the complaints of this oppression became at last so loud and numerous, that in 1826 the Governor General appointed Mr. Wilberforce Bird as a Special Commissioner to enquire into the causes of the great and general dissatisfaction. The result of that enquiry was to show that many gross acts of injustice had been committed, that the supposed Courts of justice were mere engines of extortion and oppression, and that the power of appeal to the Collector and the Governor General had been of no effect whatever in checking these evils.

In order to remedy the state of affairs thus disclosed, a law was passed. That law was Regulation VII of 1828, which it was now proposed to amend. The Regulation did not differ in substance from the agreement made in 1794; but it laid down more precise and definite rules for giving effect to that agreement. It directed a settlement and record-of-rights to be made in the Benares Family Domains. Further, within those territories, it conferred on the Rájá the powers of a Collector in respect of certain revenue matters; it provided for the appointment of Native Commissioners to determine suits relating to land or the proceeds of land; and it placed both these Commissioners and the Rájá in the exercise of his powers as Collector under the control of an officer styled the Superintendent, who was himself made directly subordinate to the Governor General in Council.

The Regulation of which he had just given an outline was still in force, and during the last fifty years no change had been made in it. During that time, however, great changes had taken place in the general administration of the country. The law had become more full and exact, and its operation more certain; procedure had been far more minutely and carefully regulated, and superior authorities had been multiplied. The attention of these higher authorities had also, of necessity, been more and more withdrawn from matters of detail and directed to matters of greater importance. In order to adapt the revenue-system of the Family Domains to the changes which were thus going on in other branches of the administration, various alterations had from time to time been made in the manner of complying with the provisions of Regulation VII of 1828. In all such alterations the intentions of the Regulation and the terms of the agreement of 1794 had been scrupulously respected. On this point he believed there had never been any just ground of complaint. It might be, however, that the precise letter of the law had not always been strictly

observed. It was necessary now to bring the law and the existing practice into accordance. But, as any such deviations from the letter of the law (if they had occurred) had been compelled by circumstances, it had been thought better to alter the law so as to adapt it to existing requirements than to attempt to make the facts comply with the obsolete provisions of the law.

Besides this, there was another reason for the proposed legislation regarding the Benares Family Domains to which it was necessary to advert. About five years ago the two Acts known as the Scheduled Districts Act and the Laws Local Extent Act were passed. Their object, as the Council were aware, was to define precisely and declare the laws which applied to certain parts of British India which were known as Non-Regulation Districts. Now, the Benares Family Domains had come under the operation of those Acts on account of the special nature of their revenue-administration, which excluded from them a great deal of the Revenue law that was generally applicable to the North-Western Provinces, and caused a distinction between them and the districts by which they were surrounded. His Highness the present Mahárájá, however, was very anxious that his Family Domains should be withdrawn from their operation. He was apprehensive apparently that some day, under the powers conferred by those Acts, the Revenue law which was generally in force in the North-Western Provinces might be extended to his estate. Nothing of the sort had been done, and he felt sure that nothing of the sort had ever been intended. But the possibility of such a thing was a cause of uneasiness to His Highness; and it had been suggested that any such apprehensions might be removed, without sacrificing the objects which the two Acts that he had mentioned were intended to accomplish, if opportunity were taken, when amending Regulation VII of 1828, to declare in the amending Act what laws were applicable to the Benares Family Domains.

These, then, were the two main objects of the Bill. First, to alter the provisions of Regulation VII of 1828 so as to adapt it to the present state of affairs without making any important change in the practice of the last fifty years. Secondly, to ascertain and declare the laws which were applicable to the Mahárájá's private estate.

Mr. Colvin hoped that this explanation would be sufficient to show the general grounds upon which further legislation in respect to Regulation VII of 1828 was required. If the leave to introduce a Bill which he was then asking for were given by the Council, he would, on a future occasion, notice more particularly the points on which it was proposed to amend the present law.

The Motion was put and agreed to.

RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to provide for the holding of property by certain Religious Congregations. He said that Mr. Chapman and other members of the Simla Union Church, so far back as the year 1873, drew the attention of Government to the hardship under which they laboured in being unable, without constantly recurring trouble and expense, to keep up a permanent and effective body of trustees to whom to commit the property of the Church. The Secretary to the Calcutta Missionary Conference about the same time made a similar representation to Government; and there were probably other bodies associated for religious purposes in India who experienced like difficulties.

The present Bill was drawn on the lines of 13 & 14 Vic., c. 28 (commonly known as Peto's Act), which was passed to meet a similar difficulty felt by Religious Societies in England. It differed from that Statute, however, first in applying only to Religious Congregations and not to Societies formed for purposes of education (which seemed sufficiently provided for by our Act XXI of 1860); and secondly, in providing for the case of moveable as well as immoveable property.

The Bill simply declared that, if property of certain specified descriptions was conveyed to trustees in trust for any Religious Congregation, and no special provision was made for the appointment of new trustees, new trustees might be appointed in such manner as that Congregation might determine; and further, that on the appointment of new trustees, whether in exercise of the powers thus conferred or otherwise, the property should vest in them without any further conveyance.

Hindús, Muhammadans and Buddhists were excepted from the provisions of the Bill, as it was thought undesirable to interfere with the laws regulating their religious endowments.

The Motion was put and agreed to.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. STOKES moved that the Hon'ble Sir Alexander Arbuthnot be added to the Select Committee on the Bill to consolidate and amend the law relating to legal practitioners.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 26th June, 1879.

SIMLA;
The 5th June, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No. 54 L. D.—19-7-80.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 26th June, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Cockerell, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover. He said that, when he had obtained leave to introduce the Bill, he explained that it would apply to the estates of all persons not at present governed by the Indian Succession Act the portions of that Act relating to the grant of probate and administration and the powers, duties and procedure of executors and administrators, omitting, however, those sections (187 and 190) which made it compulsory to obtain probate or administration. He had now to add that the Bill also omitted those sections (200 to 207) which laid down the order according to which the various persons interested were entitled to administration on an intestacy.

These latter sections it would be impossible to apply, as they were in part based on a law of intestate succession differing from that of the classes for which the Bill had been drawn. The only rule it seemed possible to lay down

for these classes was the broad one that the grant should follow the interest; that when several persons inheriting portions of the estate claimed administration, the Judge might grant it to any one or more of them as he thought fit, and that, when no such person applied, he might grant it to a creditor. This was the rule laid down by section 3 of the Bill; and, as it was apprehended that, in some cases of family feuds, a person entitled to a trifling share of the deceased's estate might apply for administration merely for the purpose of harassing his co-heirs by compelling them to apply, a full discretion had been reserved (in section 5) to refuse, for reasons recorded, to grant any application.

The Indian Succession Act, following the practice of the English Ecclesiastical Courts, provided for the taking of security for the due discharge of his office only from an administrator, it being considered that, in the case of an executor who was selected by the testator himself, such security could safely be dispensed with. But amongst the classes to which this Bill would apply, cases would, it was thought, occasionally occur in which it might be expedient to take security, even from an executor; and, accordingly, a section (4) had been inserted in the Bill amending section 256 of the Succession Act in such a manner as to give a power to the Court to require an executor to give security. This was not without precedent; for in England, as an executor was considered but as a bare trustee in equity, if he were insolvent, the Court of Chancery (or, as it is now called, the Chancery Division) would oblige him, as it would any other trustee, to give security before he entered on the trust. Several old cases in which this had been done were quoted in *Williams on Executors*, seventh edition, page 237.

Section 6 of the Bill saved in the fullest manner the substantive laws of succession of the classes to which the Bill applied. Section 8 was intended to put an end to the imperfect grants of probate and administration under the old Supreme Court Charters already referred to. To what, when moving for leave to introduce the Bill, he had said as to the insufficiency of a grant of probate of a Hindú's will he would now add that a grant, under those Charters, of letters of administration to a Hindú's estate did not affect land (I. L. R. 2 Calc. 433), so that, in the case of a Hindú dying intestate and leaving both moveable and immoveable property in a Presidency-town, it was necessary to have two representatives,—one for land and houses, and the other for goods—a matter of great inconvenience. It had, moreover, been quite recently ruled (4 Calc. Law. Rep. 290) that, if Hindús take out letters of administration at all, they must take out general letters. The useful power of making grants limited to certain property or for certain purposes was, therefore, now inapplicable in their cases. The Bill would set this right by declaring Part XXX of the Succession Act to apply in the case of every Hindú dying after the first of January next.

The portions of the Hindú Wills Act specified in section 9 were repealed merely because they were re-enacted with a wider application in the present Bill.

Section 10 was intended to remove all doubt as to the validity of certain grants of probate and administration which had been made in British Burma by the Recorder of Rangoon. The validity of those grants had been on two occasions upheld by Sir Barnes Peacock (see *Goods of Kokya Dine*, 2 Bengal Law Rep. App. Civ. Jur. 79; *Goods of Adam Saw*, 11 Suth. W. R. 413). But now-a-days, with some of the legal Sir Bedivcres of India, "Authority forgets a dying king," or, at all events, a retired Chief Justice; and a late Recorder, Mr. Housman, had raised doubts as to the soundness of those decisions—doubts which, according to their usual practice, the legislature was bound to remove.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES introduced the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Cockerell, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN introduced the Bill to amend Bengal Regulation VII of 1828, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Cockerell, the Hon'ble Sayyad Ahmad Khán and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the holding of property by certain Religious Congregations, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Colvin and the Mover. He said that the Council would observe that, as far as regarded immoveable property, the Bill was confined to cases in which such property was acquired for,—

(*a*) a church, chapel, meeting-house or other place of religious worship;

(*b*) a dwelling-house for the minister of such congregation, with offices and garden;

(*c*) a hall or rooms for the meeting and transaction of the business of such congregation.

It had, however, been suggested by the gentleman (Mr. Chapman), whom we might properly call the promoter of this Bill, that it might be desirable to extend the scope of the measure, so as to apply to immoveable property used as an endowment or for other purposes not above specified. That was a matter which he (MR. STOKES) hoped would be considered by the Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

Leave was granted.

The Council adjourned to Thursday, the 10th July, 1879.

SIMLA;
The 26th June, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 288, L. D.—7-7-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 17th July, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir John Strachey, G.C.S.I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

BURMA DISTRICT CESSES AND RURAL POLICE BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to amend the law relating to district cesses and rural police in British Burma.

He said that he should perhaps best explain the necessity for the proposed legislation if he briefly described to the Council the circumstances and conditions of the rural police in Burma, and the demand which was made upon the Government to effect some improvement in them. He would advert at a later stage of the measure, if the Council accorded him permission to introduce the Bill, to the powers which should be taken to provide the funds necessary to carry out that object, which, from his own experience and in the opinion of all the authorities who had been consulted, appeared to be a very necessary measure of reform.

The regular establishment of police in British Burma was modelled very much upon the system which obtained in other Provinces, and the proposed

Bill, if it became law, would not affect the regular police. It would affect and apply only to the rural police—an institution which we found in existence when we succeeded to the territories which now constituted the Province of British Burma, and which, owing to more urgent demands, and consequent expenditure of money, in other directions, had remained to this day, he was inclined to think, very much in the position in which we had found it. That system recognized a headman of every village analogous to the police patel in Bombay, and a headman of a circle of villages analogous, he was told, to the police officials of circles in other parts of India; and upon those officials had devolved, amid a multiplicity of other functions, civil and revenue, the duty of giving information and assistance in all matters relating to police requirements. He might explain that the village formed the unit of civil administration in Burma, and to those officials—to the headman of the village and the headman of the circle—had attached a kind of official status, as in other Government appointments in Burma, which, in the absence of anything like a large landed aristocracy or a hereditary nobility, had carried with it a social rank and superiority always recognized and highly prized. Till recent years, therefore, the position of headman of a village having general supervision of the affairs of the village and that of headman of a circle, embracing, possibly, ten or twenty villages, were appointments which had always been very greatly coveted, and which, notwithstanding the smallness of the direct emoluments received from Government, it had always been found easy to fill. Gradually, however, the growth and prosperity of the Province, bringing with it an increase of population, larger revenues and wider fields for employment in every direction, had tended to show not only to the officers of the Administration but to those men themselves that the labours now required of them were very imperfectly remunerated by the small salaries—if they could be called 'salaries'—which Government offered to them. He might explain that, now-a-days Burma received that particular kind of attention which, represented by Circulars and Resolutions of the Government of India, imposed upon the officers of the administration there much larger work in different directions than formerly. Requisitions from which Burma had before been exempt are now made upon it, as in other Provinces and Administrations. Burma, an eminently prosperous Province, and growing in population as fast as good order and security and natural laws would allow, was called upon now to register its births, deaths and marriages, and not only to say when a man died, but the particular disease of which he died; as well as to furnish information in connection with sanitation, meteorological statistics and numerous other subjects of more or less importance. He (Mr. Thompson) certainly always felt, when he was in Burma,—and he had no doubt the present Chief Commissioner felt it more acutely—that the agency for the collection of all this information was very imperfect; and there was no reason to doubt that the agent himself upon

whom we relied for such information from rural and distant places, unaccustomed to returns of this kind, found, notwithstanding the privileges of his status and position, that life was not worth having at the price which we offered him for the discharge of those duties. This was the less to be wondered at when we realised that the actual extent of the remuneration which the village headman received from Government was his exemption from the capitation tax, which was never more than Rs. 5 in the year; and that the headman of a circle, having larger jurisdiction, was in the enjoyment of a salary which did not exceed more than Rs. 10 or Rs. 12 a month. It was not therefore matter for surprise that we found the Chief Commissioner complaining that, in consequence of the smallness of the pay accorded to these men and the variety of the labour exacted from them, when vacancies arose there was great difficulty now-a-days in filling them; and he was certain that Burma administration would suffer if its village official constitution was imperilled in any way. If, however, in general matters of administration the pressure which those demands exerted was heavy, when it came to the question of police work and criminal administration it took a form which was obviously inconvenient and dangerous. With the increase of population there had been a great increase of serious crime; and if in earlier days a village headman, depending upon his isolation and his distance from any control, reported what he liked and omitted to report what he did not like, the result was that no one was any the wiser; but at the present time better administration had brought with it a more direct supervision of the proceedings of those officials; it subjected them to a closer inspection, more frequent questionings, and a spirit of enquiry which he supposed any man on Rs. 5 a year would resent as an intrusion upon his freedom. In the meantime, the progress of organized crime in British Burma formed a marked feature in the administration reports of that Province. It was not an easy country, even with the best of agencies, to administer in the Police Department, from its wide area, its scattered population, the difficulties of communication, the dense jungles which extended over its vast uncultivated tracts, and the hills which afforded shelter and harbourage to those who were inclined to criminal propensities. He had seen it stated, as illustrative of the easy condition of the ordinary Burmese villager, that he was in no sense a slave to the soil. After he had paid in his light revenue, he, with others of the agricultural population, often found employment and profit from the large inland fisheries, forests and the numerous other occupations which a small labour market afforded them; but he was afraid, when that was all told, there was yet a wicked residuum which, from its natural aptitude in such things and as much from an inherent love of adventure as from the desire for unlawful gain, committed itself to cattle-lifting and other offences against property. The reports received from the Chief Commissioner showed that there was a great prevalence of crime and

very small means of adequately repressing it. As a matter of statistics, he might mention that, while in British Burma, which had really no rural police, or hardly any that might be called by that name, the average proportion of police to area was one man to fourteen square miles and one man to every 428 of the population. If in other provinces the proportion of police is one to 1,300 or 1,400, it must be remembered that the area of police jurisdiction in Burma was much larger, with very tedious and difficult roads to traverse. In Burma there are 7 reported offences per thousand of the population; in other provinces the average is under 3 per thousand. In Burma about 5 per thousand of the population are yearly convicted and sent to jail for crime; in other provinces the proportion is from 1 to 2 per thousand. Apart from those facts, he should say that Burma had a very extensive frontier to guard, and that, in one direction especially, it was a constant source of anxiety and trouble. The efforts of the regular police had not been wanting to control those difficulties; and he was glad to find that his opinion was supported by Mr. Aitchison as to their devotion to duty and their unsparing exertions. There was, however, no proper co-operation between them and the village police; and this arose chiefly from the want of organization of the village police, its inadequate pay and the indefinite character of its jurisdiction and duties. The Chief Commissioner had, therefore, after consultation with experienced officers, Native and European, submitted a scheme to us for the remedy of those defects; and the assistance of the Legislature was now asked to carry his proposal into effect.

Liberal concessions had been made to British Burma by recent financial arrangements with regard to its provincial revenue, and this would put the Chief Commissioner in a much better position to meet the wants of the Province and to overcome the difficulties which arose from an imperfect rural police. But outside that, powers would have to be taken for providing, by an enlargement of the local cesses, funds which would be applied to the improvement of the pay and position of the rural police. He would reserve for a future occasion the explanation of the course which legislation should take, and the means to be adopted for raising those funds.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS RELIEF BILL.

The Hon'ble Mr. Hope introduced the Bill for the relief of indebted agriculturists in the Dekkhan. He said—

"In availing myself of the leave granted me at the meeting of the Council n the 5th ultimo to introduce a measure designed to afford relief to the indebt-

ed population of our Dekkhan districts, I fear it is indispensable that I should tax the patience of my hearers by treating the subject at considerable length. A careful analysis of the condition of the raiyats, and an investigation of the cause of that condition, seem to be a preliminary indispensable to a just appraisement of each of the numerous provisions comprised in the contemplated legislation.

"The 'Dekkhan riots' began in May 1875. They extended to thirty-three villages in the districts of Puna and Ahmadnagar, and many more were threatened; but order was restored within a month's time. Symptoms of the bad terms subsisting between the raiyat and the money-lender had not been wanting in past years. Whenever, as from time to time happened, the turbulent and predatory aboriginal hillmen—Bhíls, Rámusís or Kolís—rose, they made money-lenders their victims, partly from personal motives, and partly to propitiate the population generally. Not a year passed without isolated murders by exasperated debtors. But in 1875 the uneasiness became general in the Dekkhan. An individual case set fire to the long-laid train. The villagers began by combining to refuse supplies, water and service to the money-lenders, but soon proceeded to actual outrage. The singular character of the proceedings proclaimed at once their cause and their importance. Setting aside isolated cases of personal violence and plunder, the movement was simply an organised, and temperately but determinedly conducted, effort, directed to the definite object of obtaining and destroying the bonds, decrees and account-books of the money-lenders. No persons except the latter were molested. The mobs were composed of respectable members of the community, not *bádmashes*, and were often led or encouraged by the headmen of the village. On attaining their object, they dispersed as rapidly and quietly as they had come together. The eventual cessation of the riots was due, not merely to the prompt action of the police and the military, but to the assurances of the civil authorities that complaints should be enquired into and proved grievances redressed. The latter pledge it remains for this Council to redeem.

"The riots have been followed by investigations in various forms. A Special Commission, in the first place, was without delay appointed by the Bombay Government. It was composed of two European officers, Messrs. Richy and Izon, of the Revenue and Judicial branches of the service, Mr. Shambuprasád, a dintinguished Native administrator, and a civilian from the North-Western Provinces (first Mr. Auckland Colvin, now employed in Egypt, and afterwards Mr. Carpenter). Their report, in five volumes and above 1,500 pages, is a very able survey of the difficulty in all its aspects. Besides this, the riots gave a special direction in Bombay to the enquiries into the working of the Civil Courts then going on throughout India in con-

nection with the amended Civil Procedure Code under the consideration of this Council, which eventually became law as Act X of 1877; and a judicial officer, Mr. William Wedderburn, was deputed to report on the subject. Further, other circumstances led in 1878, to the condition of the peasantry in the four districts of the Dekkhan being subjected to a close investigation, in which the most experienced officers of the Bombay Presidency took part, and which is summed up in a Minute by Sir Richard Temple, dated October 29th, 1878. The Famine Commission also this year obtained a good deal of valuable evidence, to which they have been so good as to allow me free access. Finally, the question has been very ably and instructively discussed by the Press, both in India and in England. It would be impossible for me, on an occasion like the present, to summarize all these enquiries or to state separately the opinions of all the principal authorities. I can only lay before the Council what seem to myself, by the light of this mass of evidence and of my own knowledge and general experience, to be the condition of the people in the disturbed area and the causes which have operated to produce it, and then explain the measures by which the executive Government propose that relief should be afforded.

II.

"The Central Dekkhan, which is the locality principally distressed, though unfortunately not the only one, and to which the present Bill is intended to apply, consists of four 'districts' or executive collector's charges, namely, Puna, Ahmadnagar, Sholapur and Satara. The three first named became British territory in A.D. 1819-21, but Satara not till A.D. 1849. Their area is 21,000 square miles, and their population three-and-a-half millions; that is to say, the population of Scotland, located in two-thirds of its space. Mountains and forests occupy much of the country, so that the actually cultivated area gives about six acres per head of the agricultural population. The State is the landlord; the tenure *raiyatwárí* on the Bombay system of permanent occupancy, with revision of assessment every thirty years. The peasant-proprietors themselves cultivate about three-fourths of their land and sublet the remainder. The assessment or rent they pay to the Government is at average rates of from seven annas (10½*d.*) to twelve annas (1*s.* 6*d.*) per acre, which is equivalent on fairly good land to from an eighth to a sixteenth of the gross produce, and on the poor soils to much less.

"The proportion and extent of indebtedness are not easy to ascertain. In one batch of twelve villages tested by the Commission of 1875, one-third of the peasant-proprietors were found to be very heavily embarrassed; and of these, two-thirds were petty landholders, paying assessments of only twenty rupees (£2) per annum and under. Their debts came to eighteen times the average assessment, and two-thirds of this were secured by mortgage of the land. In

another batch of seventeen villages in Ahmednagar, forty-three per cent. of the proprietors were deeply in debt, the debts averaging fifteen times the assessment, but reaching forty-five times in individual cases. Only one-third of the debts appeared to be secured by mortgage, but one-eighth of the land had already been actually transferred to the money-lenders; and with regard to much of the remainder, the raiyats were virtually mere tenants-at-will of their creditors. The Collector was of opinion that, throughout the whole district, three-fifths of the people were so involved that, in ordinary course, it was impossible for them ever to get free. Upon this and much other evidence, I must confess myself unable to share optimist views of the condition of the people. Supposing only one-third of the proprietors to be irretrievably involved, is a ruined, despairing and embittered population of above a million souls beneath special consideration? The proportion seems to me, however, to have been nearer one-half than one-third, and to be, moreover, constantly increasing. Finally, it must not be forgotten that the statistics of the Commission, which I have been quoting, are now four years old. Since then, the terrible famine of 1876-77 and the subsequent indifferent seasons have passed over the land, and cannot but have left deep traces behind. True, as it is, that the peasant-proprietary struggled nobly and long to maintain themselves and their dependants without State relief, and vast as was the amount of accumulated savings, in gold and silver ornaments and the like, which they were found to possess, we must not forget that those savings were revealed by their passage to the mint, and that their dissipation must have left at the mercy of the money-lender thousands who were never so before. We may admire the honest pride and fortitude which the peasantry, as a body, displayed throughout their long-protracted trial; but we cannot ignore the obvious effects on their condition.

"Granted, however, that a large proportion of the population are deeply involved, we may well enquire whether such a condition is abnormal. It has been said, and in one sense with truth, that 'poverty and debt were the familiar heritage of the raiyats before the advent of the British rule.' Our records of the country when first acquired tell of indebtedness extending largely among the population. The raiyats, it is said, 'though usually frugal and provident,' were in many cases 'living in dependence on the saukár (or money-lender), delivering to him their produce and drawing upon him for necessaries;' and this condition is mainly attributed to the Marátha system of levying heavy contributions from bankers, to whom the revenues of villages were assigned in repayment, and of collecting the State dues generally through the agency of such capitalists, who recovered in kind what they paid in cash. Indebtedness thus arising mainly from a vicious system of collecting the land-revenue paid by all, necessarily extended to a large proportion of the population. But the amount of individual debt appears to have usually been moderate—necessarily

so, it may be added, because the security and means of recovery were small, since land was not sold for debts, and little or no assistance in recovering them was given by the State. Very much the same condition of affairs is shown by ample testimony to exist now, to a greater or less degree, in the Native States of India. I have myself noted it in those of Western India, with many of which I have had considerable official experience. The reply to our enquiry, then, is that, as compared with former times and with Native States, indebtedness now in the Dekkhan extends to smaller numbers, but is heavier in individual incidence, followed by consequences infinitely more serious and decidedly abnormal.

"Some may feel inclined to question whether, after all, there is any real harm in the present state of things. The institution of private property in land is essential, it will be said, to the well-being and progress of every civilised community, to the encouragement of industry and the accumulation of capital. But it is indispensable that such property should be in the hands of those who by their capital, intelligence and industry are qualified to turn it to the best account. If this condition be not fulfilled, but the land be held by a class who, through their ignorance, improvidence and want of energy, have burdened their heritage with debt which can never be repaid, and thus have deprived themselves of all incentive to labour and all interest in its results, then the only remedy is to promote rather than to obstruct a gradual restoration of healthier conditions of society by the bankruptcy and eviction of the incapable. True as such principles undoubtedly are in modern European populations, considerable caution is necessary in applying them to the ill-studied and little-understood problems of Oriental life. Assuming hastily a similarity of premises, we are apt to jump to familiar conclusions, and to inaugurate action wholly inapplicable and pernicious. Much of the difficulty in the present instance arises from such inconsiderate interference in the past. When we overturn by an Act of the Legislature institutions which popular consent has maintained for above a score of centuries, we sometimes forget that we are not the bearers of a political revelation from Heaven.

"In the present instance there seem grave reasons for doubting whether the premises upon which a policy of *laissez-faire* is based are sound. If the present condition of the Dekkhan raiyats are caused by inherent moral and physical defects, unfitting them for peasant-proprietorship; if they encumber the land to the exclusion of a class of intelligent, enterprising and energetic capitalists, and if the land is such that capital in large single sums can alone effect its improvement, then, indeed, we must perhaps sit down and sit out the process of gradual transfer of the rights of property from the one class to the other, merely softening, if need be, the fall of the sufferers. But consideration will

show that no such circumstances exist in the Dekkhan. The Marátha kunbi is not the defective and useless creature postulated. No such material composed the armies of Sivají and his successors, which defeated the Mogals, overran half India, and founded an empire of which the remnants still flourish around us. As a soldier, the Marátha in olden days was as enterprising as he was hardy, equally able to 'bide a buffet' and to strike a blow. At present, he furnishes material perhaps second to none in India for the purposes of modern war. All representations of him as thriftless, enervated and puny are incorrect. As a peasant-proprietor, he is no unfavourable specimen of the class. Mr. Chaplin and our other early authorities give him credit for many sterling qualities. He is still represented by the Commission as a 'simple, well-disposed peasant, contented with the scantiest clothing and hardest fare,' not without 'masculine qualities' and 'a stubborn endurance,' though still mostly uneducated, and consequently without a broad range of intelligence. Of course, improvidence and slovenly cultivation may be detected in individuals or particular localities. But we must not expect too much. Under British rule, the kunbí has undoubtedly progressed as fast as adverse circumstances allowed. He works his fields to the best of his lights, and in the dry season travels far in search of day-labour, or with his cart on hire. During the late famine he displayed resources equally creditable to his thrift and his good-feeling. His embarrassed condition seems to be rather his misfortune than his fault, induced by the calamities of the last century, the obligation of ancestral debt, the burden of the land-revenue demand—formerly in amount and latterly in imposition—and the facilities for extortion conferred by our laws upon his creditors.

"On the other hand, those into whose hands the land is now observed to be passing are not yearning for it in order to improve it by their intelligence, enterprise and capital. With solitary exceptions, the transferees are the professional money-lenders, who have no wish even to hold the status of landed proprietors, much less to invest their capital in comparatively unprofitable agricultural experiments. Often too they are aliens, who return home after a time. So far from eagerly getting the land formerly transferred to their own names, they show general reluctance to do so. They prefer to keep the raiyat on his land, and extract all they can from him: the punctual discharge of their advances is the last thing they desire. As Mr. Auckland Colvin says—

'the position is that of a man recorded as occupier of his holding, and responsible for the payment of revenue assessed on it, but virtually reduced by pressure of debt to a tenant-at-will, holding at a rack-rent from, and sweated by, his Márwárí creditor. It is in that creditor's power to eject him any day by putting in force any one of the decrees he has against him; and if allowed to hold on, it is only on condition of paying over to his creditor all the produce of his land not absolutely necessary for next year's seed-grain or for the support of life. * * He has nothing to hope for, but lives in daily fear of the final catastrophe.

Under a so-called raiyatwári settlement it is gradually coming to this, that the raiyat is the tenant, and the Márwárí is the proprietor. * * The proprietor is irresponsible; the tenant unprotected. It promises to become, not a raiyatwári, but a Márwárí settlement.'

Such conditions deprive the transfer of land from distressed to moneyed classes of all the glamour with which political economy would surround it. They show that the noble gift of property in land, made by the British Government to the peasantry for their sole benefit, is passing, contrary to their intentions and in frustration of their objects, to a class unfitted to possess it. As observed as early as 1852 by Sir George Wingate, the great author of the gift—

'it was never contemplated that the measures intended to secure these benefits for the class of landholders should transfer their dearest rights and the possessions that had descended to them from their forefathers to a class of usurious money-lenders, and degrade the former to the position of labourers or of tenants cultivating their former lands at the will of the latter.'

In short, the second of the premises on which a policy of *laissez-faire* would rest is as unsound as the first. In the words of Mr. Pedder, a gentleman who has long made a special study of this subject, and whose talents have lately led to his transfer from the Bombay Civil Service to a high position at the India Office,—

'it cannot be too clearly understood that only in the dream of a visionary will the English agricultural system of large landlords, capitalist farmers of large farms, and peasant-labourers for wage, ever be substituted for the *petite culture* of India. Happen what will, each raiyat will till his petty holding; but he may be, as we have made him in Bombay, its proprietor; he may be, as in the North-West, a member of a proprietary cultivating community; he may be, as in Rájputáná, the customary tenant of an hereditary lord; or he may be, as I fear he is becoming, the prædial serf of a money-lender.'

"Only one of the three premises mentioned above remains—that the land is such that capital in large single sums can alone effect its improvement. That is exactly what it is not. There are indeed certain localities, limited in number, where irrigation projects may alter the character of the produce and counteract seasons of drought. But these are far too extensive for individual enterprise. They must be undertaken by joint stock companies or Government, and the latter has them in hand But the great proportion of the cultivated area is such that the most it is capable of can be made out of it either by mere careful tillage and economy of stable manure, or by petty improvements, such as, for instance, digging a well, banking-up a stream or watershed at certain seasons, making a supply-channel from a neighbouring canal or river, or altering the level or inclination of a field—by action, in short, of exactly the kind which the peasant-proprietor, standing on his own land, fully realising its capabilities, and feeling pride and pleasure as well as utility in developing them to meet the growing needs of himself and his children, is at once the most competent and the most likely to apply. That he has so improved his estate since it came into his hands when he could, despite all the adverse circumstances by which

he has been met, is proved by the increase in wells and the reclamation of unassessed waste within holdings during the last thirty years. Whether he shall pursue these inclinations freely, or continue, as at present, thwarted and checkmated at every turn, it now mainly rests with us to decide.

"To the question, therefore, whether there is, after all, much harm in the present state of things, we must, perforce, answer that the harm is of the greatest. To a peasantry such as I have described, expropriation means discouragement, despair and exasperation. To the money-lending class, it means the acquisition of what they are unfitted to use and do not particularly desire to have, of what yields them at best a precarious profit, not exceeding that which reasonable rates of interest, combined with easy recovery, would produce, but wrung forth with trouble, anxiety, expense, popular execration, and even personal danger. To society, it means the discouragement of labour in extracting wealth from the soil, the application of capital in disadvantageous and comparatively unproductive channels, and the fomentation of disorder and outrage. As reported to the Bombay Government in 1858 by Mr. J. D. Inverarity, the Revenue Commissioner—

'the question is one of vital importance both to Government and the people. Even the passive society of the East cannot bear so great a burden without making from time to time convulsive efforts to shake it off. These efforts must increase in frequency and strength, unless the Legislature seriously takes up the evil and applies the knife to it.'

III.

"Assuming, then, that indebtedness to an unusual and extreme extent is the condition of a large proportion of the people in the British Dekkhan, we must enter into a critical examination of its probable causes before we can hope to apply an effective remedy. These causes are numerous, and complicated both in themselves and in their action and reaction upon each other. They may be conveniently classed as 'normal' and 'special.'

"The normal causes are those which may be found at work, more or less, at all times, and some in all parts of India, others only in certain localities. First of these stands *poverty*. It is obvious that where there is a peasant-proprietary, though the stimulus to individual exertion is considerable, and in India the Hindú joint-family system tends to prevent minute subdivision, the individual capital cannot be great, and misfortunes comparatively small will throw even a thrifty and industrious person into the hands of the money-lender for temporary loans. Besides this, the kunbi of our Dekkhan labours under the special disadvantage of a soil mostly indifferent, and a rainfall so precarious, that he hardly gets a full crop once in three years. Finally, the obligation to pay a father's debts, laid by Hindú law upon a son without any equitable restrictions, imposes a burden oppressive at all times, and too often aggravated by

fraud in the creditor and ignorance in the debtor. The Commission, in fact, go so far as to term ancestral debt the 'chief cause' of the raiyat's embarrassments. Next to poverty comes ignorance, which renders the unlettered peasant unable to read, and often to understand, the documents and accounts in which he is vitally concerned, or to state and substantiate in a Civil Court a good defence when he has one, and thus makes him a tempting subject for every kind of roguery. *Social observances*, such as marriage, birth and funeral expenses, also swell the roll of obligations; but, being connected with religion, they are to a great extent unavoidable. If occasionally excessive in prosperity, they are reduced in bad times. The Commission consider that in amount they are generally not larger than the raiyat's income, if otherwise only fairly taxed, would justify, and that undue prominence has been given to them as a cause of his ruin. *Improvidence* must be admitted to contribute its share to the catastrophe; but it consists as the Commission remark, 'rather in the short-sighted improvidence of an ignorant class, ready to relieve present necessity by discounting future income on any terms, and unable to realise the consequences of obligations foolishly contracted, than in an extravagant expenditure and misapplication of income.' To this may be added an honest and confiding, rather than vigilant, temperament. A soil yielding but one crop, and therefore the whole year's income at one period, a climate so capricious as to preclude at seed-time any safe estimate of what the harvest, if there be one, will be worth, and prices varying above cent. per cent., as they twice have done in this century, might well derange the calculations, and produce the bankruptcy, even of sober men of business.

"Besides these normal causes conducive to indebtedness, there exists a long array of special ones, some general in their operation, others peculiar to the Bombay Presidency or the Dekkhan alone. These I propose to notice in four groups—namely, those increasing credit, diminishing ability to repay, proceeding from the revenue system, and comprised in the term 'arming of the money lender.'

"*Increased credit* obviously flowed primarily from our establishment of a settled government, and the consequent immunity of the raiyat from being plundered and murdered by hostile armies, or drawn from his fields, perhaps killed in battle, on his own side, as also from the grosser forms of private crime. A like effect followed our land-settlements. The meaning of the phrase 'land-revenue' varies greatly in different parts of India. In Bombay the State is the landlord, entitled to the entire rent—that is, to the whole net produce or surplus after deducting the cost of cultivation and of the subsistence of the peasant and his family. The State has no intermediary or landlord to think of to whom a certain proportion of the rent must be left. It may relinquish to

the peasant-cultivator as much or as little of the rent as it chooses. The Native governments preceding us relinquished but little, and the cultivator was rack-rented. Hence, even a small debt pressed heavily, and complaints of indebtedness were general when we acquired the country. Gradually we reduced our land-revenue demands, producing immediate relief and recovery of agriculture, until by the revenue survey system, founded by Goldsmid and Wingate in 1838-40, and gradually extended throughout the Presidency, we levy, says Mr. Pedder, only one-half, *at most*, of the net produce or rent, thus leaving the cultivator a liberal margin upon which to borrow and repay. But we went further than this. Under the Native government a cultivator could not, according to custom, be ejected as long as he paid the revenue demand; but that demand was so high that his right of occupancy was worth little or nothing, and was, besides, mostly not recognised as saleable. The land was not his to sell, being deemed the property of the State. Under our settlement, however, 'this right of conditional occupancy' (to quote Bombay Act I of 1865) 'is declared to be a saleable and transferable property.' Though the land is still termed 'Government land,' the occupant has acquired a tenant-right far wider than that of Ireland, and has virtually become proprietor, while the Government retains only a rent charge, variable once in thirty years, within certain prescribed limits. The right of property thus granted acquired simultaneously a considerable value through the reduction of the revenue demand and its invariability for thirty years. The gift, intended to enrich the raiyat, increased his credit along with his means, thus exposing him to the loss, not only of the extra share of net produce bestowed, but of the land from which a livelihood had hitherto been secure.

"Fast upon these additions to solvency and credit came days of brilliant but ephemeral prosperity. Commencing with 1850, railways, roads, bridges and other public works poured millions into labourers' hands, while a series of good seasons gave the best encouragement to agriculture, and brought almost every available acre under the plough. Then came the American war, raising to almost fabulous rates the prices of cotton and other produce. These circumstances had a double effect: many raiyats paid off, or greatly reduced, their debts: many more, both of these and others, increased their expenses, and some even borrowed largely, upon the strength of increased incomes which they supposed would last for ever: all learned a higher standard of comfort and new wants, which they could not relinquish with readiness equal to the subsequent rapid contraction of their means. A further expansion of the raiyat's credit was induced by greater facility in obtaining loans, owing to two reasons. The arming of the money-lender, to which I shall presently allude, rendered frauds and legal recovery of advances easier. Also, the general prosperity increased the capital of money-lenders for investment and the number of persons com-

peting in the business. Money was lent recklessly, on unsound credit; money was lent designedly to secure the unwary raiyat as a bond-slave for ever.

"*Diminished ability to repay* arose partly from greater pressure on the land by the population, which had grown 45 per cent. in the thirty years ending with 1875. The proportion of 167 souls per square mile becomes extremely heavy after making allowance for mountains, forests, &c., and for the defects of the cultivable soil and the climate. But even the cultivable area cannot be, on an average, as productive as in former days. When only a half of it was cultivated, the best soils were chosen, fallows were readily allowed; the waste land and forests supported cattle freely; the stable manure was sufficient. Now all is reversed. The waste land has disappeared; the cattle and manure are insufficient in proportion; the jungles have become reserved forests; the poor soils reduce the average; and the general result is a lower yield per head for subsistence or repayment of debt. Again, the raiyat's solvency was reduced by a great fall in prices after the close of the American war. Between 1836 and 1866 prices rose from fifty-six to eighteen *seers* per rupee: between 1866 and 1874 they fell again to fifty *seers*. With the various causes of low prices; with questions such as those of the effect of levying revenue in money instead of in kind; of the sufficiency of the circulating medium, or of the action of the so-called 'Indian tribute,' I am not now concerned; for our present purpose, to note the fact of the fall is sufficient. A series of bad seasons has, likewise, supervened. Finally, the effect of an absence of stimulus to exertion in lessening ability to repay must not be overlooked. Where the raiyat is hopelessly involved, and all produce goes to the creditor, a bare subsistence being given back, what inducement can there be to add to the latter's gains? The raiyat pays off less; his debt on paper increases, and what more? He thinks it 'as well to be hung for a sheep as for a lamb.'

"*To our revenue system* must in candour be ascribed some share in the indebtedness of the raiyat. Time would fail me were I to attempt to enter here into the elaborate question of the pressure of the land-revenue demand, nor does my subject require that I should do so. The Commission's report and the other enquiries to which I have referred contain the fullest information on the subject. Suffice it to say that it is amply proved that the riots had no immediate connection with the revision of assessment, which was neither imposed nor contemplated in many of the localities where they occurred. Still less can the general indebtedness of the raiyat be ascribed to the weight of the assessment, whether unrevised or revised, since the proportion of the net produce taken is low in itself; very low for *a landlord* to take; far lower than that prevailing in 'alienated' British villages and adjacent foreign States. I am here of course speaking broadly, irrespective of individual instances of over-

assessment, which in so vast an undertaking may not improbably have occurred. But it seems likely that indebtedness arising mainly from other causes, normal or special, may have been aggravated by our rigid system. If any considerable increase at a revision were gradually worked up to in the course of two to five years, the raiyat would have time to readjust his expenses to his means instead of being taken by surprise, and perhaps driven to the money-lender. Again, if the recovery of instalments were more coincident with the time when the raiyat realizes on his produce, instead of falling sometimes too early and sometimes too late, and so the land-revenue were more in practice (what it is in law) a first charge on the latter, much temporary borrowing, fraud in crediting produce, and eventual Government process for recovery, might be avoided. Some debt, too, may be caused by the fear of eviction—a mode of recovering the revenue for which a substitute is much needed. Moreover, though the system of taking revenue in kind, besides involving the injustice of assessment on the gross produce instead of the net, is so open to fraud, when adopted on a large scale, as to be impracticable, its object might be attained, in localities subject to drought, by such suspension of the revenue demand as to spread over three or four years, according to the seasons, the aggregate amount to be recovered in that period. Finally, in times of famine, suspension of demand might be systematically granted, as of late it has been by Sir Richard Temple, and even total remission, which is not inconsistent with the Bombay settlements. And, above all, whatever relief is deemed reasonable should be granted in time.

"*The arming of the money-lender* is a general term which I shall apply to the process of increasing in numberless ways the legal power of creditor over debtor, which has been synonymous with the elaboration of our Indian law procedure. In our early judicial dealings with our newly-acquired possessions in the Bombay Presidency, we combined as far as possible the Native model in form with European common sense and equity in practice; but gradually the system was made more regular and rigid. Mountstuart Elphinstone's Code of 1827, however, still contained much of the old leaven, such as arbitration courts, usury law, and a long limitation for suits. Only gradually did creditors perceive and work up to the advantages the law had given them. At first the debtors complained of usurious interest only. From 1843 to 1850 the Court's influence became rapidly more apparent. Attachments and the extortion of new bonds with a premium for forbearance increased. From 1850 to 1858 credit and frauds much expanded. Numerous public officers pointed out the mischief which was going on; none foresaw more clearly than Sir George Wingate how the benefit of his settlement was being turned into wrong channels, or pleaded more earnestly, though in vain, for prompt and effective remedies.

While affairs were in this state, the legislature stepped in to aggravate the evil. In 1859 the period of limitation for suits was reduced and the first Civil Procedure Code was passed, followed by the Stamp Act in 1860.

"The condition then consummated, which has lasted with but slight variation for about twenty years, may be thus briefly summarized as it appears in the Dekkhan. The procedure is highly elaborate and technical; the penalties for contravention of it severe, and litigation dangerous without the guidance of a pleader, whose services are costly and interests often at variance with those of his client. The procedure is the same for a debt of Rs. 5 and Rs. 5,000, except in the rare instances where Small Cause Courts are established. Stamp and court expenses have nearly doubled. Arbitration has been gradually shouldered out, partly by the superior prestige of the Courts, partly by the stamp-duties, partly by its disadvantages for the money-lender. Suits may be heard *ex parte* in the absence of the defendant, and are found to be so, in the four Dekkhan districts, in above half of the cases. Great weight is attached by the Courts to bonds, and they are therefore largely, almost exclusively, depended on. However fraudulent, extortionate or in excess of consideration a bond may be, the burden of proof lies on the debtor, and in practice his defence is generally hopeless. Payments on a decree made by the debtor out of court were (till 1877) ignored, and were therefore obtained, wherever possible, by the fraudulent creditor. The reduction of the limitation period for bonded debts from twelve to six and in some cases three years, and for simple money debts from six to three years, respectively, has subjected the debtor to compound interest, frequent suits, extra costs and a vast increase of his liabilities. The power of obtaining arrest and imprisonment gives the creditor the means of extorting almost any terms for his forbearance in exercising it. Of all the weapons he has obtained, this has been proved to be the most misused. The power of sale in execution extended, till 1877, to *everything* the debtor possessed: since then certain bare necessaries have alone been exempted. Land remains saleable, whether ancestral or acquired, subject to certain provisions for saving it analogous to an *elegit*, which have hitherto proved inoperative, but are now being amended. Of all sales it is a characteristic that the property, through technical difficulties, constantly goes for a mere song, and the creditor is the purchaser. Decrees were, till 1877, interminable, and the Commission found numbers to be of twenty years' standing. Now they may be executed for twelve years. A sub-judge mentions one executed *nine* times. If the persecuted debtor turned towards the law of insolvency, he, till quite recently, found it little more than a name. Until actually arrested or in jail, he could not resort to it at all: and whether, after doing so, he escaped its pitfalls and two years' imprisonment or not, his subsequently acquired property and earnings were liable (unless his debt was under Rs. 100 and the judge chose to discharge

him) until the last pice due, with interest, had been repaid. Finally, the increase of work entailed delay, with loss of time and money, in the disposal of cases, while financial reasons led to reduction in the numbers of the Courts, and consequently to their greater remoteness from the raiyat's home. And all this is the more important, in that a vast increase of litigation has followed the new law, so that in 1876 there were 37,128 suits, and in 1878 (after the famine) 27,577, disposed of in our four districts alone.

"The tendency of the change of relations thus gradually brought about by the law will be seen to have been all one way—in favour of the party possessing the most intelligence and money. Even of old the superiority of the money-lender over the raiyat was considerable, though the former had little power of compulsion; but by the law this superiority has been infinitely increased. The likening of the contest between them to one 'between a child and a giant' is no figure of speech; yet the law presumes them both to be equal! That the superiority is fully and often fraudulently availed of is proved by the vast increase of litigation just mentioned; by the evidence of judicial and revenue officers and of numberless debtors; by the scrutiny of accounts by the Commission and by the use in 1874 of some 150,000 warrants as threats only. The general result is that through these undue powers the raiyat is enslaved by a vast amount of debt, which has been much enhanced by our legal system, and in part was never incurred by him at all. In concluding this sketch, it seems scarcely necessary for me to add that the law, and not the Judges, are to blame. Some of the most valuable proofs of the defects of the former are derived from judicial officers, Native as well as European; and I fully agree with Mr. Auckland Colvin that it is 'very much to the credit of the subordinate judicial administration that it has expressed itself so clearly as to the position which it is compelled to occupy.'

IV.

"Having thus enumerated the various causes of the raiyat's indebtedness, I will briefly classify them according to the possibility or expediency of remedial measures. As causes regarding which little or no special action is practicable we may put down all normal ones. Ignorance, improvidence and extravagant ceremonial or social expenditure can never be eradicated from the world, either in the Dekkhan or elsewhere, though time, experience and education may reduce their strength. An agricultural population everywhere is comparatively ignorant; they are found so even in England under a compulsory educational system, much more in India, where compulsion cannot be thought of. But village-schools are exceptionally numerous and efficient in the Bombay Presidency; cultivators' children form 21 per cent. of the pupils, and we may hope for gradual improvement in this respect. Comparative poverty must continue

the lot of a peasant-proprietary whose soil is poor and climate capricious. Periodical absorption of savings by famine can, at least, be only diminished in degree by palliatives of partial applicability, such as forest conservancy, railways and irrigation, which, under Sir Richard Temple's vigorous administration, are being promoted as rapidly as means allow. Prices must take their course.

"As causes regarding which interference is undesirable may be mentioned the increased credit due to orderly government, property in land and competition of money-lenders, and the lessened ability to repay arising from the diminution of waste land for fallows and grazing by the extension of cultivation and forest reserves. The raising of the land-assessment to the level of Native States in order to stimulate exertion, and the lowering of it so as to pay private debts at the expense of the community in general, are equally out of the question.

"Respecting the remaining causes, action, either executive or legislative, seems open to us. *Executively*, some little might probably be done to relieve pressure of population by favouring emigration to other districts. Then, though the idea of Government agricultural banks appears to me to be unsound in theory and unworkable in practice, the opening of local loans in small amounts, as in France, might offer to bankers an alternative for indiscriminate lending on usury, and to cultivators an investment preferable to ornaments. The system of advances by Government for land-improvement, also, might be simplified. Again, relief might be afforded by modifying, in the directions I have already indicated, the mode in which our land-revenue demand is imposed and levied. Stamp and process fees and batta seem also capable of revision. Finally, there are exchange and cognate financial questions. But I must not dilate upon these executive remedies, which are beyond the sphere of this Council. I have touched on them merely in order to show that I am not so simple as to suppose that all the raiyat's difficulties will be removed by the passing of the Bill before us. *Legislatively*, what we can do, what is proved by overwhelming evidence to be the thing required, what we undoubtedly ought to do, promptly and effectively, is to restore, as far as may be, the rude balance between debtor and creditor, which has been disturbed by our own legal institutions. We may take back many of the weapons inconsiderately placed in the money-lender's hand and shown to have been misused; we may check the undue credit arising from unjustifiable facilities for recovery; we may increase ability to repay by removing discouragements to industry; we may obey the long-neglected proverbial mandate to hear both parties; we may substitute for the blind and ruthless operation of legal machinery the intelligent dispensation of justice between man and man.

V.

"As introductory to a fuller definition of the principles upon which our proposed measure should rest and to a detailed explanation of the Bill itself, it may be instructive to survey, briefly, the relations of debtor and creditor as they were found on the introduction of British rule and as they may now be seen subsisting in some of the best administered Native States. For the former period I can quote no better sketch than that given in the despatch of the Secretary of State dated December 26th, 1878, which has recently become public—

'Under Native Governments, it seems no assistance was, ordinarily, afforded by the State to a creditor for the recovery of his debts. No Court of justice was open to him, and he was left to his own devices to extort what was due, Government winking at very forcible measures that were occasionally employed. The result was not so bad as might have been expected. It speaks well for the national character that contracts were rarely repudiated. And the Commissioners observe that in these proceedings honesty was the best policy for the raiyat and caution was a necessity to the money-lender.'

"In order to state correctly the present practice in Native States, I have made special enquiries in four cases. As to Haidarábád, His Excellency Sir Salar Jung has favoured me, through the Resident, Sir Richard Meade, with a valuable memorandum and summary of regulations. From Bhaunagar, a large State in Káthiáwár, which was, till lately, under joint administrators, English and Native, during the minority of the Thákur, and of which a graphic account by Sir David Wedderburn appeared last year in the *Fortnightly Review*, I obtained a note through Mr. Percival. The system in Morvi, another Káthiáwár State, is described in communications from the administrator, Mr. Shambuprasád, who was a member of the Dekkhan Riots Commission. About Baroda full information is forthcoming in the administration reports of Sir T. Madava Ráo and the letters of some private Native friends I have there. In all these States civil suits for debt are comparatively rare. The limitation period, where there is any definitely laid down, is twelve and six years. The Hindú rule of *dám-dupat*, or disallowance of interest at any time in excess of the principal, is observed in Baroda, Bhaunagar and Morvi. In Haidarábád usurious interest is summarily cut down to a reasonable rate. Imprisonment for debt is not allowed in Morvi, nor, apparently, in Bhaunagar. In Baroda it is forbidden altogether during the cultivating seasons, and very sparingly used at other times. In Haidarábád it is reserved for cases of contumacy and fraud. As to the sale of a raiyat's land and house for debt, both are exempt in Bhaunagar, and the former (if not both) in Morvi. In Haidarábád the sale of either is said to be resorted to in extreme cases only. In Baroda only such portion is saleable as may be in excess of what is indispensable

for the residence and support of the raiyat and his family, and sales are not favoured by the Courts. The sale of moveables is also under characteristic restrictions. In Baroda the raiyat's implements and cattle necessary for cultivation, cooking utensils and clothes indispensable for daily use, 'the ornaments which a married woman must have on her person as long as her husband is alive' (even if not hers, but her husband's) the two months' corn for the raiyat and his family are all exempt. In Bhaunagar only agricultural stock and implements in excess of what is necessary for cultivation, as also the produce, may be sold; and in Morvi the rule seems much the same. In Haidarábád the reservations embrace cattle and implements necessary for agriculture, seed-grain for the next season, grain for subsistence for six months, and necessary apparel and cooking utensils. In all the States the fixing of instalments is common, and, whatever may be the standard rules promulgated through a desire to imitate our judicial institutions and to obtain credit for well-organized government, a summary enquiry into the facts of the case, with scrutiny of accounts, and a more or less rough-and-ready adaptation of the creditor's demands to the debtor's means, appear to be the practice. This practice, being supported by popular opinion, is probably less affected in individual cases by corruption, partiality or oppression than might on general grounds be expected. Having held for many years intimate relations, official and otherwise, with Native States, which in Bombay form one-third of the Presidency, I can say with confidence that, making due allowance for the growing mischievous tendency to copy the British system blindly, the picture just presented is, on the whole, fairly typical of them all.

"This picture may, at first sight, seem to exhibit conditions under which either the raiyat can get no credit or the money-lender no returns. As a matter of fact, however, neither result occurs, because all the parties concerned—debtors, creditors and rulers—thoroughly understand the limits to their several action which are essential to their several ends. No doubt the raiyat has in many cases a hand-to-mouth sort of existence; but even this is endurable, combined with immunity from eviction. I have come upon a passage in Sir T. Madava Ráo's Administration Report of the Baroda State for 1875-76 so ably describing the position that I must ask leave to quote it at length—

'Sales must not be made so rigorous as to crush or impair industrial energy or to induce its emigration. The Civil Courts have to be specially careful in regard to the last-mentioned point, which mainly concerns the raiyats. These have frequent dealings with the saukárs, whose exacting tendencies are well known. The Civil Court should take up such a position between the raiyat and the saukár as freely to allow benefits to pass, but effectually to arrest mutual injuries. The raiyat here can never, as a rule, altogether dispense with the services of the saukár; for the seasons are not so regular nor are the means of irrigation so extensive as to ensure equability or constancy of production. Again the land-tax is in most cases

fixed, and absorbs a considerable proportion of the produce; and, again, the prices of produce fluctuate, changing the incidence of the tax on the produce from year to year. In other words, while the outturn of the land is necessarily varying, the raiyat has to pay a fixed and considerable tax, which must come from the land. In other words, again, the exchequer has to draw a constant and continuous stream out of a fitful supply. The saukár by his interposition meets the mechanical necessity of the problem. He is the receiver of the fitful supply, and enables the raiyat to pay the sarkár equably. He often performs another useful function, namely, he enables the raiyat also to draw from that fitful supply an equable subsistence for himself and family. It is thus to him that both sarkár and raiyat are indebted for equalising to each their annual receipts from a fluctuating source. He, therefore, fulfils very beneficial duties, and deserves to be conserved as an almost indispensable part of the rural organization. At the same time, we are bound to see that he does not override the interests of the raiyats. Let the Civil Courts enable the saukár to recover his just claims from the raiyats. But the Courts should not permit the saukár to press the raiyats to the point of crushing. This point should be well defined and ever kept in view. No process of the Courts should, without the concurrence of the revenue-officers of the sarkár, deprive the raiyat of his land, of his agricultural cattle and implements to the extent necessary for the cultivation of that land, of his cottage, and of food and raiment according to the necessity of himself and family. These should be left to the raiyat, and, as a general rule, placed beyond the grasp of the saukár. It should be understood that the first demand on the produce of the land is that on account of the sarkár tax; the next is that on account of the subsistence of the raiyat and his family; and the last is that on account of the debt due to the saukár. The surplus which may be forthcoming in good seasons after meeting the first two demands may be made available to the saukár for the recovery of his advances made to or for the raiyat in bad seasons. This being understood, the saukár will easily limit his advances to the prospects of such recurring surplus, and will not go beyond. This principle of adjustment may be expected to work well and to the advantage of all the parties concerned, provided that the land-tax is not so excessive as to trench upon the subsistence of the raiyat and the remuneration of the saukár in an average year. As a rule, the principle is not novel in Native States, and has been long in operation, more or less. Our new Civil Court should recognise and respect it, and by no means set it aside. After what I have stated, I need hardly say that our Courts should not imprison the raiyat on account of debts due to the saukár and consign industrious hands to idleness, unless where the debtor may be fairly presumed to possess the means of payment and to withhold payment from a refractory spirit.'

"The *Quarterly Review*, in an able and interesting sketch of the Dekkhan published last April, further truly describes the useful functions of the money-lender in relation to both the State and Society:—

'The village-banker is essential to the social system of the country. At once the purchaser of rural produce and the local agent of the central mercantile firms, alike the village shopkeeper and money-lender, he enables the peasantry to derive full benefit from a good season, and to moderate the recurring disasters of drought and flood. Without his aid the rent would not be realised. His functions in normal times are most important, but in the abnormal times of famine they are indispensable. Then the banker and shopkeeper is stimulated to double activity in both capacities. He advances from his stores food, seed, stock, and even money to the peasantry, who can offer nothing but their credit in return. By relieving the better classes of the community he lessens the pressure on the public purse.

But he does more than this. * * * Experience has proved the advantage of leaving the transport and distribution of food-supplies to private trade. * * It is the saukár who spans the gulf which separates want from plenty, and fulfils the functions of distribution which no State agency can perform.'

"The problem before us is how to keep the money-lender in his place, to encourage and support him in all useful functions, but to restrain him, as he is restrained in Native States, from becoming the enemy and oppressor of the poor? The leading principles of our new measure then should be to give both sides fair play, instead of setting the two classes by the ears; to diminish the risk of fraud in borrowing and extortion in repaying; to diminish the risk of loss in lending and excessive delay in recovery; to obliterate any stigma resting on our judicial institutions. We must foster due credit, check that which is undue, and allow free scope to all civilising processes and healthy relations between capital and labour. We must hold the raiyat responsible in our Courts for what he has really borrowed, not for what he has not, and make him repay by his own exertions all that he reasonably can repay, not set him free, by sudden, one-sided or 'heroic' remedies, to enter on a fresh career of indebtedness. In short, we must see the parties as they really are, in a condition of Oriental, not of European, civilisation, and deal with them by the Indian experience of success in past generations and failure in the present, rather than by the intrusion *per saltum* of alien institutions which are in their own land the result of centuries of experience under totally different conditions.

"I will now endeavour to set forth, as clearly and fully as time and the occasion permit, the principal provisions of the Bill I am introducing, premising that, as the latter is intended to supplement, modify and dovetail into the Civil Procedure Code, and it therefore in some parts presents to the unskilled reader a confused and imperfect aspect, I shall discard its arrangement, and endeavour to express in plain English the effect which its provisions (coupled with the Code) are intended to produce.

"The first object aimed at, is to establish precautions against fraud by either debtor or creditor in their original transactions with each other, and so keep them on good terms and out of court, as far as possible. The Commission thus enumerate the chief frauds which are practised :—

By creditors: (1) forging bonds; (2) withholding the consideration mentioned in bond; (3) obtaining new bonds in satisfaction of old bonds and of decrees and nevertheless enforcing the latter; (4) not giving credit for payments (5) refusing to explain or wrongly representing their accounts to debtors.

By debtors: (6) tendering in evidence false receipts and false evidence of alleged payments; (7) pleading that bonds are false when they are really genuine.

"Chapter VIII of the Bill is intended to meet the first three and the last-mentioned kinds of fraud. It provides that every instrument to which an

agriculturist is a party shall be written by or under the superintendence of a village-registrar, executed in his presence, and attested by him; that the registrar shall give a copy of it to the party not entitled to the original, and shall both endorse on the original whether transfer of consideration took place before him or not and mark for future identification any instrument which such original supersedes. The reasonableness of such a measure is evidenced by the provisions for notaries in France and most other European countries, and by the penalty in England on unauthorized persons practising as conveyancers. Instruments not so executed will be invalid. By these means every raiyat should at least know what he signs, and both parties should receive due protection. Chapter IX, directed against the remaining three kinds of fraud, provides, under a penalty, for the grant to raiyats on demand of written receipts, annual statements of their account, and pass-books, and for the latter being written up from time to time and attested by the money-lender. These two chapters are based on recommendations of the Commission. Certain provisions of both of them may to some eyes appear too minute to be satisfactorily workable. But due allowance must be made for the existence of a raiyatwárí settlement; for the detailed regulations which the position of Government as a landlord necessitates, and for the intimate personal relations with the people resulting from residence of revenue-officers (who will supervise the working of these chapters) in camp for six or seven months of every year. For instance, the granting of receipts for revenue payments and furnishing every raiyat with a copy of his account have in Bombay been provided for by law since the commencement of British rule, and the calling raiyats in person by thousands and testing the pass-books or receipts given to them by the Government books is there one of the most ordinary and useful duties of an assistant or deputy collector.

"The next step contemplated is that, whenever serious misunderstanding unfortunately arises between money-lender and raiyat, either party should be able to resort to a friendly non-judicial authority bound to use his best offices to reconcile the two, and that no litigation should be commenced without a certificate from the Conciliator (as the authority constituted by chapter VI will be termed) that his endeavours in this behalf have failed. Such Courts of Conciliation were advocated by Sir John Strachey just twenty years ago, and by Mr. Cust in 1870 in the *Calcutta Review*. On the present occasion, their success in France was brought forward last year by Sir Erskine Perry, in some Notes which have been published in India; and the subject is suggested for consideration in the Secretary of State's despatch already referred to. For details of the French system, derived from personal observation during a residence in France, I am much indebted to Mr. Fitzpatrick, Secretary to the Government of India in the Legislative Department. The proposed Conciliators will so far differ from the French *Juges de Paix*, that they will not

have, in addition to conciliatory functions, a petty judicial jurisdiction (up to 100 francs = Rs. 50), nor will they be able to compel the attendance of the defendant before them; but they will, in consequence, be unable to exercise undue pressure, which in India might perhaps under some circumstances be apprehended.

"Closely connected with the subject of conciliation is that of Panchâyats, or arbitration by non-official persons or bodies, such as the Puna Arbitration Court, and of incorporating such arbitration, with more or less assistance and control, into our judicial system. The question is a difficult one in some aspects. All that I am now able to say is that it is under careful consideration, and that any provisions which may be decided on can be inserted hereafter in the Bill when passing through the Select Committee of this Council.

"Supposing that, notwithstanding all the preceding precautions, the dispute unfortunately develops into litigation, the Bill next endeavours to place the Courts of law within easier distance from the homes of the people, and to make them more absolute, less technical, less dilatory and less expensive. I may here mention that, out of 4,650 villages in our four districts, only 29 per cent. are now within ten miles of their Courts; 35 per cent. are from ten to twenty miles off; 24 per cent. from twenty to thirty miles; and 12 per cent. between thirty and sixty miles—distances which, in the absence of railways, represent a considerable inconvenience and loss of time to those obliged to attend. In pursuance of the objects just named, chapter V empowers the Local Government to appoint any Patel of a village whom it deems competent to be village-munsif for his own village, or, if desired, for other villages also within a radius of two miles. The munsif's jurisdiction will be limited to suits for money not exceeding ten rupees, and will generally follow the model of the Madras village-munsif's system, constituted under Madras Regulation IV of 1816, except that the munsif will not have, as there, a further jurisdiction, by consent of parties, extending up to Rs. 100. The munsif's decision will be final, except in case of corruption, gross partiality or misconduct proved before the special Judge, to whom I will presently refer. This Madras system is well worthy of attention. It is a remarkable fact that these munsifs dispose of nearly one-fourth of the whole civil litigation of the Presidency. In other words, some 45,000 suits, for which the people in Bombay might be dragged to our regular Courts, with all their attendant delay, cost and harshness, are in Madras quietly disposed of at the people's own homes without any one of these evils. Nearly the whole of these suits are for sums not exceeding Rs. 20, and nearly half for Rs. 5 and under; but the returns do not show how many of them are for Rs. 10 and under, and therefore tried without the consent of both parties. It has been surmised that many of the disputes here dignified by the name of 'suits' are so petty, that in Bombay

they are never brought to a regular Court at all; but the general statistics do not bear this out, as in the Bombay Mufassal in 1877 there were 144,412 suits to a population of 15½ millions, while in Madras there were only 190,290 to about 31 millions. Again, I understand from Mr. Carmichael, Member of Council at Madras, who has kindly given me much information, that the bulk of them are not between usurers and raiyats. But the fact remains that a very inferior agency can dispose successfully, without appeal, of suits not lower in value, though differing somewhat in nature, from those with which we have to deal. Although, however, village-munsifs may thus be a fairly efficient institution in Madras, where they are a survival of ancient times, and where society is still in a comparatively simple state, it would be impossible at the present day to constitute them by law throughout all villages or village-circles in our Dekkhan districts. The people are now too independent, too active-minded, too irreverent to accept implicitly the decision of village seniors as such, or, as a Native newspaper puts it, 'in the present times of freedom and liberty, when even children do not obey their parents, the village head-men have no authority and influence.' Even if we in Bombay could successfully impose on our hard-worked and ill-paid Patels this, to them, novel function, there is the further difficulty in their case that the bulk of our petty suits are brought by money-lenders, with whom the Patel would too often be, by want of education or by absolute interest, unqualified to cope. Our advanced conditions postulate a more skilled judicature, better Judges, and, consequently, fewer of them; and these the Government must in the main provide. At the same time, there can be no harm in taking advantage of the present opportunity to empower the Government to invest with petty jurisdiction up to Rs. 10 any village Patels whom it may here and there find to be qualified by education and character. We may hope that the number of such will gradually increase.

"Next above these new Munsif's Courts come the existing Courts of subordinate Judges, who are all trained officers, divided in two classes, with proportionate powers, and receiving salaries of from Rs. 200 to Rs. 800 per mensem. These Courts it is proposed to strengthen in two ways. Their number will be increased from 24 to 36, thus diminishing their local jurisdictions and the distances to them from the people's homes; but this, being an executive measure, needs not to be provided for in the Bill. Their powers will, moreover, be considerably increased. By chapter II of the Bill all subordinate Judges in the four districts will be invested with what are termed Small Cause Court powers, but enlarged so as to include mortgage-cases of the class in which agriculturists are so commonly involved. And by chapter IV they will all receive jurisdiction in insolvency. The question of how far the summary jurisdiction, not open to appeal, which the Small Cause Court model implies,

might safely be entrusted to the two classes of subordinate Judge has received careful consideration in connection with the opinion of the Secretary of State in paragraph 33 of the despatch: 'I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all civil Judges in the Dekkhan with great benefit.' It is considered that such jurisdiction may be conferred on the first class subordinate Judges up to the full limit allowed in the Mufassal Small Cause Courts Act, namely Rs. 500 (£40), and on the second class subordinate Judges up to Rs. 100 (£8) absolutely, and up to Rs. 500 by consent of the parties (on the analogy of the higher jurisdiction of village-munsifs in Madras). But three special safeguards are proposed in chapter VII. *Firstly, inspection.*—A special Judge will be appointed to inspect, supervise and control the proceedings of the subordinate Judges, munsifs and conciliators under the Act in all the four districts, and see its new principles and policy effectively carried out. The special Judge will be aided, in each pair of the four districts, by a special assistant Judge or subordinate Judge, who will during the greater part of the year be engaged in travelling about, inspecting and supervising all subordinate Courts. In Bombay the Collector and his assistants similarly move about, inspecting and controlling the revenue and magisterial administration, mixing with the people, and, in particular, examining the civil work done by mámlatdárs. Long experience has proved that the system produces excellent results. *Secondly, revision.*—The power of revision vested in the High Court by section 622 of the Code of Civil Procedure is extended, on the analogy of section 295 of that Code, to the special Judge, who will be enabled to call for and examine the record of any case and correct failures of justice, as also similarly to deal with cases called for and referred to him by his assistants just mentioned. The powers of the High Court under the same section will remain intact. *Thirdly, sitting 'in banco.'*—The special Judge and the assistants with his authorisation are enabled to stay the proceedings in any case pending in a subordinate Court, and to sit with the Judge as a Bench to try it. The power of withdrawing a case and trying it himself, or transferring it to another Court, which the district Judge possesses under section 25 of the Code of Civil Procedure, will also be exercised by the special Judge, and by his assistants with his authorisation. These provisions will enable important cases to be tried by superior officers or a Bench, and promote that exercise by such officers of their personal example and that enlargement of their practical experience which are thought so desirable by the Secretary of State.

"In concluding this part of the subject, I should explain that the amended jurisdiction will, for convenience' sake, supersede altogether that under the Mufassal Small Cause Courts Act, and thus litigants who are not agriculturists will in money cases obtain throughout the four districts the special advan-

tages designed for the latter. Also, no special provision is made for subordinate Judges moving about and sitting at different places, because they can be required to do so under the existing law.

"The procedure followed by the Courts under their new jurisdiction will be pretty nearly that of Small-Cause-Courts, which again differs but little, except as to recording evidence at length, from that of the Code of Civil Procedure. One exception, however, is so important as to require special mention. The Commission pointed out that the proportion of cases decided in Bombay *ex parte*, or in the absence of the defendant, vastly exceeded that in any other part of India. In the four districts the proportion ranged in 1876 from 60 to 74 per cent., and last year from 57 to 66 per cent. This has been ascribed to a variety of causes, of which the chief probably are ignorance of the raiyat that he has a defence, want of means to pay a pleader, conviction that the Court, for want of time or other reasons, will not go into the merits of his case or look behind the bond, fear of irritating his creditor by a defence or fraudulent non-service of summons. The various provisions of the present Bill, however, completely alter the position. The obligation laid on the Court of going into the whole merits of the case, and behind the bond if necessary, to which I shall presently allude, will remove the first three of the above causes of backwardness on the raiyat's part, and will probably lead to his more frequent voluntary appearance. But that obligation can scarcely ever be successfully performed in his absence and without his help; and it is therefore considered indispensable to make it incumbent on the Court ordinarily to exercise in all cases of a defendant's non-appearance the power of compelling him to attend now vested in it by the Code for exceptional use. Compulsory attendance will meet the other two causes of absence above mentioned. Any hardship which it might be supposed to involve will be more than balanced by the consequent better hearing of the case, and will, moreover, be much lessened by the proposed bringing of the Court nearer to the debtor's home.

"Closely connected with the question of procedure is that of how far effect should be given to the suggestion of the Secretary of State that possibly it would be desirable to exclude professional pleaders from the 'Courts with summary jurisdiction and without appeal up to a limited amount' which he desires. Upon this point we have two precedents. The French Code excludes all skilled advocacy from the Courts of the *Juges de Paix*, whether in conciliation or trial of suits, in the following most stringent terms:—

'Aucuns avoués, greffiers, huissiers et ci-devant hommes de loi ou procureurs ne pourront representer les parties aux bureaux de paix.'

The Madras Regulation for village-munsifs excludes professionals, but allows the deputation of a relative, servant or dependant—so that, for instance, a saukár

could send his *gumáshta*, and a raiyat could send or bring with him a clever son or nephew, educated in a Government school. It may be true that where a case, involving even a moderate amount, is intricate, owing to mortgages or other exceptional circumstances, a competent pleader may be of much use both to the parties and the Court. On the other hand, it must be admitted that a pleader is a weapon at the command of the rich alone (one subordinate Judge even states that a pleader who often took raiyats' cases would lose his best customers); that in simple suits a pleader can often add nothing of value to what is in evidence, but only wastes time and introduces confusion; and that the presence of pleaders predisposes some Judges to decide on what counsel put before them instead of going independently into the merits. Upon a balance of such considerations, the draft Bill follows the Madras law in excluding pleaders, but admitting non-professionals, in all cases before a village-munsif or conciliator. It also attempts to check the unnecessary employment of pleaders in higher Courts, by excluding pleaders' fees from the costs awarded in cases before a subordinate Judge not exceeding Rs. 100, unless the Court certifies that professional assistance was necessary to the proper conduct of the case. The appointment of a pleader by the Court in cases where the debtor needs counsel but cannot obtain it is also provided for. This has been suggested in several quarters, and seems reasonable.

"I must here venture to express my regret that a material simplification of the civil procedure with a view to saving delay and expense has not been found to be feasible. I see from official returns that in the Bombay Presidency in 1877 the average duration of uncontested suits was 132 days, and of contested suits 272. It is no doubt true that the intricacy of a suit has no necessary connection with the amount in issue, and that a mortgage for Rs. 50 may present the same features as one for Rs. 5,000; and it may be argued with much show of reason that a Procedure Code should provide for all possible circumstances, and be of general application. At the same time, looking to the fact that, out of about fourteen hundred thousand civil suits of all kinds disposed of annually by the Courts of all grades in British India, some twelve hundred thousand, or 85 per cent., are for sums under Rs. 100 (£8), and six hundred and thirty thousand, or 44 per cent., for sums less than Rs. 20, I cannot but feel, and I think the people feel too, that our Civil Procedure Code, with its six hundred and fifty sections and all that they involve, is in minor cases a burden almost too heavy to be borne. I trust the day may come when not only Dekkhan raiyats but all India will obtain some relief in this respect.

"Having thus noticed the proposed reorganization of the Courts, I proceed to explain some important changes contemplated in the substantive law which they administer. These group themselves round two main heads,—the definition of a debtor's liability, and the mode and extent of its enforcement.

"A Court proceeding to determine the amount of a debtor's liability is met *in limine* (in our four districts at any rate) by the undeniable fact that, as Mr. Pedder expresses it, 'the passing of a bond by a Native of India is often of no more value as proof of a debt he thereby acknowledges than the confession by a man under torture of the crime he is charged with.' The Commission urge two points,—that the money-lenders have learned, through our system, to use and rely upon bonds almost exclusively, and that their bonds are mostly no correct representation of actual transactions. In close connection with this difficulty about bonds is that of usurious and of compound interest, whether only levied in the account, or also provided for in the bond. That the money-lenders do obtain bonds on false pretences; enter in them sums larger than agreed upon; deduct extortionate premiums; give no receipts for payments and then deny them; credit produce at fraudulent prices; retain liquidated bonds and sue on them; use threats and warrants of imprisonment to extort fresh bonds for sums not advanced; charge interest unstipulated for, over-calculated, or in contravention of Hindú law, and commit a score of other rogueries—these are facts proved by evidence so overwhelming that I scarcely know whose to quote out of the five volumes composing the Report of the Commission. Hence arises the question whether, as the Secretary of State expresses it, 'the Courts should be obliged to enter into the merits of every money-claim, whether secured by bond or not, and should award only such sums, whether for principal or interest, as they deemed just, and should in no case give compound interest, or a larger amount of interest than the principal sum.'

"The answer in the affirmative has been maintained, in various quarters of not inconsiderable authority, to be in accordance with sound general principles of equity. Sir Arthur Hobhouse, in a note on the execution-sale of land dated April 28th, 1874, when alluding to some remarks by 'a man like Sir John Strachey, who treats the subject with equal sobriety and ability,' continues—

'From my point of view, I say that, if what he has said, or the major part of it, be now true, it can only be met by a large increase of correctional power over contracts to be vested in judicial tribunals and strengthened by a usury law. In our own country the Courts of Equity invented laws for the protection, not only of persons of weak character and immature age, but of expectant heirs, of reversioners—in fact, of all persons placed under temptation to make improvident bargains. When they came across the usury laws, they made them subject to the more sweeping law created by themselves, and moulded them so as to produce fairly reasonable, though not very legal, results. They laid hold of mortgages under which the mortgagee became absolute owner if the debt were not paid by a certain day, and declared that the parties did not mean what they had said, but that, notwithstanding the absolute forfeiture, there remained an equity of redemption in the mortgagor. * * * I do believe that sensible Judges, armed with a large power of moulding improvident bargains, and

strengthened by a usury law in the background, may administer more than a trifling palliative.'

Sir George Wingate wrote thus in 1852—

'It remains to be shown how it is that the creditor in our Provinces has acquired a degree of power over his debtor which is wholly unknown in Native States. This power, it is clear to me, has been conferred by our laws, which enable the creditor to obtain a decree against a debtor for whatever may be written in his bond, and enforcement of that decree by the attachment and sale of whatever property, moveable or immoveable, his debtor may possess or acquire. * * * The first remedy I have to suggest is as follows: * * The enactment of a law to permit the Court to decree in all cases, on equitable consideration, whatever rate of interest it may deem proper, but that in no case shall the total amount of interest exceed the principal; and that the Court shall also in all cases be at liberty to fix the amount of the principal on equitable considerations with reference to the amount which it may consider to have been actually received by the debtor, and irrespective of the sum entered in the bond or acknowledgment of the debt.'

Mr. Pedder says:—

'A bond should not be considered sufficient proof of a debt unless its antecedents will bear the light, and show that the consideration for which it was passed was a fair as well as an actual one. * * * *

'It appears to me that some limitation of the rate of interest and some restriction on grossly unfair stipulations in contracts, as contrary to justice and public policy, are practicable and expedient.'

From 'The Land and the Law,' a well-known pamphlet by the Hon'ble Mr. Justice West, of the Bombay High Court, I take the following excerpts:—

'If, on the one hand, therefore, the State must needs lend its aid to the creditor as an essential condition of material progress, it must, on the other hand, assign bounds and conditions to this aid, without which it will probably become an instrument of social and political mischief. Particular classes in England supposed to be specially subject to imposition or unfair usage—as seamen and miners—are protected against disadvantageous bargains. The truth is recognised and acted on that there is no real equality, even of the roughest kind, between them and their employers. Still less can such an equality be assumed with safety in a community split up into sections, divided by the impassable barriers of caste and hereditary occupations. The extremes of astuteness and gullibility are thus fostered and brought into contact. * * * At an earlier stage, borrowing at interest in England, as elsewhere, was generally an appeal of helplessness to avarice. * * * There are few who will deny that the India we have to deal with is much more like that earlier England than the England of to-day. * * * In the case of all obligations for a principal of not more than Rs. 500, the Courts should have full power to treat any interest in excess of nine per cent. as simply penal, and to cut it down to such rate as should, under the circumstances, seem just. * * * Compound interest should be disallowed, consistent as it is with sound commercial principles, in order to make it a disadvantage to creditors to leave obligations unsettled until the debtors are involved beyond redemption.'

"But upon this subject not only opinion but precedent are forthcoming. Of the manner in which our Government, a few years ago, deemed it necessary

to protect the raiyat we have a striking instance in a clause (still unrepealed) of the Bombay Regulation V of 1827. It runs thus :—

'*Clause 2.*—And in the case of a cultivator of the soil, sued upon a written acknowledgment executed at a place which was not at the time of such execution under British jurisdiction, if the circumstances are such as to convince the Court that the creditor might reasonably be expected to possess other proof of the amount besides such written acknowledgment (the consideration received for the same being contested), then the said writing shall not be held conclusive as to the amount, whether the defendant prove a deficiency in the consideration or not, but the Court shall pass a decree for only such amount as the claimant may otherwise prove to be due.'

The law which preceded it, Regulation I of 1823, was even more explicit :

'*Section 36.*—Whenever a cultivator of the soil is sued upon an acknowledgment in writing executed by him before the territory where it was executed came into the possession of the British Government, it shall be competent for him to plead that he did not receive a full consideration for the same, whereupon the plaintiff shall be required to prove his debt in the same manner as if no acknowledgment had been executed; and such sum only as in the circumstances of the case is just and equitable shall be allowed in the decree.'

The wisdom of our early legislators in thus dealing with the facts around them was greater than their foresight, which led them to hope that with the planting of the British flag and the establishment of 'a regular system for administering justice' the causes would pass away by which 'cultivators were easily induced to grant written obligations for larger sums than were due.'

"What the Bombay Government of Sir Richard Temple have from the first substantially advocated and what we really need, is something approaching to a restoration of this early law, together with power to cut down unreasonable interest. The Court should set itself to do substantial justice in every case which came before it, instead of being satisfied with the letter of a bond or the bald assertions of either party, and it should of its own motion make such inquiry as it found necessary to this end. On the one hand, a simple denial of consideration should not throw the burden of proof on the plaintiff, but on the other, if the circumstances were such that he ought to have clear accounts and evidence and he failed to produce them voluntarily or on the Court's requisition, the Court would draw its own conclusions against him accordingly. If he did not come into Court with clean hands he would be entitled to little consideration. The Court should not go farther in any case or against either side than sufficed to get at the truth of the matter, and to give an equitable decision. There appears no reason to fear that such an exercise of its discretion by the Court would be either unfair to the creditor or demoralizing to the debtor. The objections to usury-laws are well-known and so cogent that only special circumstances can justify special legislation. Even a maximum legal rate of interest, however, had this advantage that, as Mr. West says, "it set up a standard, and gave fixity to men's vague ideas of what might reasonably be asked

for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction." Where the rate of interest is regulated by the ordinary laws of supply and demand, interference is indefensible, unless, as in the case of interest after decree, the security be changed. But where, as Sir John Strachey has said, 'the conditions depend more upon the degree of simplicity in the borrower and of rapacity in the lender than on anything else,' no such respect need be paid to them—the less so that with Hindús we have the support of the law of *dám-dupat*, and that the security will be greatly increased by the provisions for recovery to be mentioned shortly. It has been urged, and with some truth, that there is nothing in the present law to prevent such enquiry and doing of substantial justice; that certain rulings of the Bombay and other High Courts are suggestive of this course and support *dám-dupat*, and that the provisions of the Contract Act as to undue influence are very wide. But, however this may be, the practice of the lower Courts is usually different, and there are good reasons to fear that, unless their duty in this respect be clearly expressed in the law, ignorance of rulings, press of work, indolence or a desire to get through cases rapidly will, as hitherto, tend to prevent its performance. It may be pointed out, finally, that Lord Cranbrook, besides confirming the sanction given by Lord Salisbury to the introduction of the Bombay draft Bill containing provisions on the principle above referred to, appears to look with approval on 'extending the powers of Judges to modify the contracts entered into between man and man.' In accordance with this view the first four sections of chapter III have been framed, and will apply to all determination of the debts of agriculturists which may take place under the Act. The history and merits of disputed or doubtful cases will be enquired into, and an account will be taken in a certain way if the Court considers the agreement not fair and equitable. Whether these sections express intelligibly, or will secure effectively, the action needed seems doubtful; but they can perhaps be improved in select committee. Regarding this safeguard and those of registration accounts already explained, I should perhaps observe that any ingenious person can imagine methods by which debtor and creditor in collusion may evade them. But the same may be said of many other most beneficial enactments. We can only help those who will help themselves; and I believe a large portion of our Dekkhan peasantry will take heart of grace to do so.

"A second important question affecting the determination of the amount of the debtor's liability is that of the period of limitation. The old law of Bombay (Regulation V, 1827, sections 3 and 4) fixed twelve years in the case of debts supported by a bond, and six years in the case of debts not so supported, as the periods within which civil suits for recovery must be brought respectively. By Act XIV of 1859 these periods were reduced to six and three

years respectively, with the further restriction that a debt supported by written contract was to come under the three years' period, unless it was registered. This is the present law, Acts IX of 1871 and XV of 1877 having made no material change. There is an almost universal consensus of opinion that, as the Commission say, 'The reduction in the periods of limitation has been the cause of considerable hardship to the debtor.' Under the old law, the debtor was rarely sued or called upon to renew the bond till near the expiration of the twelve years, and then he was, at most, sued under the provision of *dám-dupat* for twice the principal sum lent. But under the law since 1859 the creditor is forced within every three years either to sue the debtor, or to obtain from him a fresh bond for principal and any accumulated interest. In practice, he does so nearly every two years, in order to make sure of not missing the period through any accident or default. To show the difference between the two laws: Rupees 100 at 9 per cent. become Rs. 208 in 12 years; but if the bond be renewed triennially, the amount is raised to Rs. 260. At the higher rates which are but too common the effect is more startling. Rupees 100 at 25 per cent. become Rs. 400 in twelve years; but renewals every two years produce a total of Rs. 1,139! That these results are actually enforced in practice is amply proved by the evidence taken by the Commission, from which Mr. Pedder (in an interesting article in *The Nineteenth Century* for September 1877) gives a few illustrations. In short, the debtor thus suffers the cost of writing and stamping a new bond; is charged compound interest instead of simple; often has to bear the expenses of a suit, and, finally, is frequently obliged also to submit to a large nominal increase of the principal, as the price of the creditor's forbearing to sell him entirely up, or to have him arrested and imprisoned. It is perhaps unnecessary for me to quote numerous authorities at length to prove these general results. The collective opinion of the Commission has been stated. Mr. Auckland Colvin summarises the evils, and favours a change. Mr. Shambuprasád has treated the subject with much minuteness, and strongly urges the restoration of the old Bombay law. Revenue and judicial officers, both Native and European, take the same view in their letters to the Commission. Mr. Pedder has been quoted already. Mr. Wedderburn, in a report specially called for by the Bombay Government, advocates a twelve and six years' limit; and it has, I observe, been adopted as desirable at a public meeting of the inhabitants of Puná held not long ago. The Collector of Puná gave evidence to the same effect before the Famine Commission.

"The only plea which has, as far as I am aware, been advanced in favour of the three-years' period is that it obliges the making up of accounts at short intervals, thus enabling the raiyat to know how he stands, and preventing his being deeply involved without his knowledge. This objection had, undoubtedly, very considerable weight at the time it was made. Whether the benefit of a

short account, thus secured by a three-years' limitation, outweighed the evils of a new bond, compound interest, &c., which it entailed, is a point upon which there may well be difference of opinion. But the whole aspect of the question seems to be changed by the provisions in chapter IX of the Bill regarding receipts and statements of account. Taken in connection with section 17, which enables any agriculturist to sue for an account, and to get a declaration of the amount really due to him under all the new and searching provisions of the Act, it would appear that the object of short accounts will now be attained, and perhaps more efficiently than it ever could have been by the indirect expedient of a limitation-law. Under these circumstances, it is proposed to restore, by section 72, the old Bombay law.

"I now proceed to the second head—the mode and extent of enforcement of equitably determined liability. In the execution of a decree by sale of moveables, the necessary wearing apparel of the judgment-debtor and his wife and children, his implements of husbandry, and such cattle as the Court may deem necessary to enable him to earn his livelihood as an agriculturist, are now protected by the amended Code of 1877, so it has not been thought necessary to go further. As to execution against the person by arrest and imprisonment, I rejoice to state that it is now considered expedient to abolish it altogether. Imprisonment will still be inflicted as a punishment for fraud detected on insolvency; but that is a totally different thing. The maintenance of imprisonment for debt, as found in the Indian law, is equally indefensible in principle and in practice. As to principle, the Dekkhan Riots Commission make clear that point, utilising the opinions of John Stuart Mill. Their appendices teem with evidence in detail as to the extortion and wrong of which the warrant of arrest becomes in practice the engine. Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery and even female dishonour may all be obtained—the first three constantly, by the mere production of the warrant of arrest without enforcement. They say, for instance, that in 1874 'it would seem probable that somewhere about 150,000 warrants had been used as threats only.' The outcry against imprisonment from officers well qualified to judge of it has been uniform and persistent. Its abolition is unanimously recommended by the Dekkhan Riots Commission. Mr. Pedder and Miss Nightingale have in *The Nineteenth Century* brought the evils it causes prominently before the British public. Sir Erskine Perry gives its abolition his 'unqualified approval' in a note dated December 1st, 1877. Judicial officers and pleaders take the same view as the Executive. Were it even defensible in theory, which we have seen that it is not, the abuses to which, in a country like Western India at least, it is proved to lead in practice afford sufficient ground for its condemnation in the districts to which the Bill is to apply. The case has already been once laid, though less perfectly and

authoritatively than at present, before the Governor General's Council in the debates on the Civil Procedure Bill. The representations I then made had the warm concurrence of Sir Edward Bayley and the learned Advocate General for Bengal (Mr. Paul). The discussions in select committee as well as in council showed that the objections to the measure related less to its principle than to the other arrangements, such as an effective insolvency-law, and a speedy recovery of *bonâ fide* debts, by which it ought to be accompanied. These the Select Committee and the Council could not see their way to, owing to the insufficiency of the judicial machinery in the Mufassal; and the matter may be held to have been deferred rather than negatived. But the present Bill provides all these necessary accompaniments for the districts to which it is to apply. Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill, it will be quite unnecessary for these purposes and reserved for cases of flagrant fraud or dishonesty in insolvents. In this altered position I trust that no hesitation will now be felt by the Council in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilized world.

"The case of execution of a decree by sale of immoveable property remains for notice. The problem of whether such sales should be enforced—one of the most difficult by which Indian administration is beset—is entirely the creation of British rule. Although the later Hindú law permitted the sale of land 'on proof of necessity' and Muhammadan law placed no bar to it whatever, the general feeling of the country against alienation of ancestral lands, coupled with the trifling value of the right of occupancy and the political objections to expropriation felt under a Native Government, to which I have already alluded in my sketch of the system of Native States, appear to have co-operated to prevent sales to any noticeable extent. But under our judicial system 'the sale of land registered in the collector's books is' (as observed by Lord Stanley in a despatch of January 25th, 1859) 'the most ready way of enforcing a judgment: it gives the least trouble to both the creditor and the Court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other, even in the most trifling cases.' The Code provides, indeed, an alternative to sale of the nature of an *elegit*, or temporary alienation, by allowing the land to be placed under the management of the collector for a term of years, not exceeding twenty, whenever there is reason to believe that the liability can be thereby cleared off. But the sections enacted in 1859 were not efficient for the purpose in view, and therefore little acted on. Those substituted in 1877 accidentally became almost unintelligible, and we are now amending them. Practically,

therefore, sale has hitherto stood in the Code unfettered. The extent to which this judicial system has been allowed to play varies remarkably in different parts of India. In Lower Bengal a zamíndárí and certain subordinate tenures are freely saleable, but the tenure of an occupancy-raiyat is not; and the local legislature are just now considering whether transfer shall be allowed, provided the purchaser be a brother-raiyat and not a money-lender. Saleability in execution will, of course, follow power to transfer. In the Panjáb hereditary or joint-acquired land cannot be sold in execution without the sanction of the Chief Court, or other land without that of the Commissioner. In the Central Provinces and Oudh ancestral property cannot be so sold without the sanction of the Chief Commissioner, or self-acquired property without that of the Commissioner. In Ajmer all sale is absolutely prohibited. In the North-Western Provinces, Madras and Bombay sales are unrestricted. The position of the question as I have just described it is generally admitted to be unsatisfactory. In a correspondence originated by the despatch of Lord Stanley already quoted, carried on through the last twenty years, and now here embodied in some four hundred pages of print, the question of a remedy has been discussed by the most able administrators throughout India. The alternatives of making land by law absolutely unsaleable for debt; of enabling proprietors to make it so by voluntary trusts or entails; of limiting sale (as in some Native States) to any surplus unnecessary for the subsistence of the proprietor and his family; of replacing sale in execution by usufructuary mortgages for the debtor's life or a maximum term of years; of restricting sales to specifically pledged land; and of confining the power of sale to the Chief Court of a district—all these have found powerful and zealous advocates. In favour of restriction generally, it is urged that to a community whom a variety of circumstances combine to constrain or tempt into debt, the addition of the land to the security they can offer is no advantage whatever, but the reverse. It merely amounts to a permission to live on capital, instead of living on income, anticipated perhaps, but still only income. The process of living on capital is but a short one, all the world over. Abolish the whole land-revenue to-morrow, and the process would merely be somewhat prolonged. The inevitable end must come at last, but its concomitants of eviction and penury will, where the evil is wide-spread, lead to large charitable relief in famine—perhaps eventually to a poor-law—and are also, in parts of India at least, politically dangerous. But the conclusion of this Council when passing the Civil Procedure Code, as explained most fully by Sir Arthur Hobhouse in a remarkable speech on March 28th, 1877, was that, though special measures might be admissible in particular localities, the plan of temporary alienation through the collector for a term of years, whenever the property would be ultimately saved thereby, being in accordance with the past course of legislation regarding land in England and not inequitable, deserved a fair trial; and that, before

going further, an attempt should be made to give life to the intentions of the legislators of 1859, which have to a great extent failed of effect.

"My object in this statement of the position of the land question, which I fear may be deemed a digression, is to account for the absence in the Bill of any attempt at a final comprehensive settlement of it, and at the same time to show the connection and admissibility of the two limited measures which are proposed. Section 23 exempts the land of agriculturists from attachment and sale unless it has been specifically pledged. The equity of thus restricting a creditor's security has able champions in the general correspondence already referred to. But in Bombay the question is mainly one of fact, whether the existing debt can be held to have been, on the whole, contracted in view of the security of unpledged land. Keeping in mind the large proportion of such debt which the Commission found to be ancestral, the recent date (1865) of the legalization of transfers of occupancy, the known reluctance of the raiyats to pledge their land, and other considerations, the first local authorities have decided that it cannot. I must confess to some misgivings as to how the exemption may work in practice. The money-lender may everywhere make the execution of a bond, laying on the land all his existing unsecured advances, an indispensable condition of further accommodation. At the same time the exemption rests as to the past upon a perfectly intelligible and reasonable basis, while as to the future, the proposed village-registration will at least ensure that every raiyat when he pledges his land shall understand what he is doing, and insolvency will open to him a loophole of escape when unreasonably pressed by an extortionate creditor, if he prefers that alternative. The second measure, also contained in section 23, is the grant of power to the Court, when passing a decree or subsequently, to direct the collector to pay off the amount by managing for not more than seven years any land not specifically pledged, after deducting a modicum sufficient for the support of the debtor and those of his family dependent on him. This course, which is only a new application of the principle of temporary alienation, will add greatly to the creditor's security, while diminishing the worry and expense to both himself and the debtor; but I reserve further exposition for the Insolvency-chapter, where analogous provisions occur.

"While thus contemplating the continued recovery of debts from moveables and land, however, policy no less than justice demands that the last refuge of an effective insolvency-law should be provided for the debtor. Such a law is really the bottom of the whole matter. Compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe sinks into insignificance. The need for it has been generally admitted for a long series of years, and had led to various legislative efforts and measures.

Sir George Wingate in 1852 advocated strongly 'the enactment of a simple and equitable insolvent-law to enable a debtor hopelessly involved to free himself from all his liabilities within a limited period'; and so recently as December 23rd, 1877, he wrote thus: 'Of all the remedies proposed, I estimate the Insolvency Act as of the highest importance, and as likely to prove the most efficacious.' Sir Bartle Frere in 1853, when Commissioner in Sindh, issued Rules which worked well, but were superseded in 1861 by the Code of Civil Procedure. Mr. William Frere, Member of Council at Bombay, introduced into the Legislative Council there in 1863 a Bill based on these Rules and the Insolvent Act of the Presidency-town (11 & 12 Vic., cap. 21), but applicable to the whole Presidency. It was carefully matured in select committee, but was eventually withdrawn in 1867 for a variety of reasons, of which the expediency of awaiting the result of contemplated legislation in England was one of the chief. Sir James Stephen in 1870 introduced into the Legislative Council of the Governor General an Insolvency Bill applicable to all India. It was taken almost entirely from the English Bankruptcy Act of 1869; and on circulation to the Local Governments was generally held to be too complicated and unsuited to the circumstances of the Indian Mufassal. In 1872 Mr. (now the Hon'ble Justice) West, Judge of the Sadr Court in Sindh, proposed a Bill with the essential features of the original Rules of that Province; but the matter was not proceeded with. The measure generally is also advocated in his well-known pamphlet 'The Land and the Law.' In 1872, also, the Panjáb made a material step in advance in the Laws Act then passed.

"Upon the acknowledged harshness of the Indian Law of insolvency as it stood up to 1877 I need not enlarge. The new Code of that year, together with the amending Bill, which will, I hope, be passed at our next sitting, have so far relaxed it, that a debtor arrested or imprisoned, or whose property has been attached, may by application obtain a general inquiry into his affairs, a declaration of insolvency, and a release if in jail (with immunity from subsequent arrest for the scheduled debts) on *boná fide* surrender of all his property. A judgment-creditor also may apply for such declaration. A final discharge may also be granted by the Court at its discretion where the debts do not exceed Rs. 200, and is in any case acquired on payment of one-third of the scheduled debts, if the assets do not produce more, or after the lapse of twelve years. The law is still, however, most defective. Application may not be made by a debtor until process has issued against him; arrest is retained and imprisonment, though for a shorter period; *all* property, except the moveables exempt from sale in execution, must be surrendered; the debtor may be summarily imprisoned for a year, 'at the instance of any creditor,' for concealment or bad faith, while no such penalty awaits the creditor; and in some cases the debtor's future earnings will be unreasonably burdened, while in others the creditor will

not get what might fairly be recovered for him. Finally, the whole becomes a farce through the restriction that the Court may not grant a declaration unless it 'is satisfied' that the debtor 'has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts,' as if persons able to pay in full were the usual customers of the money-lender!

"The fact is that insolvency-law for the Indian Mufassal made an altogether false start. In England fraud by the debtor is the chief danger, and even the legislation of 1869 has failed through his ingenuity; in India fraud by the creditor has almost solely to be guarded against. In England insolvency is presumably a man's fault; in India it is presumably only his misfortune. In England embarrassment ordinarily arises from gross extravagance or reckless trading; in India one or more bad seasons, the loss of a bullock or two, or the religious necessity of marrying a child, are its more frequent origin: extortion and fraud by creditors help its onward course. Yet in England insolvency has hitherto been treated more leniently than in India. Misfortune has here been made a crime, for which even life-long slavery might not atone. Surely, we must divest ourselves of much confusion of ideas. Whether a man *is* insolvent or not is a mere question of fact, quite unconnected with the enquiry how he came to be so. How much he *can* repay, without being made a useless and dangerous member of society, is a mere matter of calculation, into which the moral aspects of his past conduct cannot enter. To such enquiries ideas of revenge and punishment are altogether irrelevant. Imprisonment is only appropriate for concealment, contumacy and other forms of fraud. To declare an agriculturist insolvent when he is so; to set a reasonable time before him during which he shall work himself free and reserve the means therefor; and eventually to start him afresh with the lesson of experience, seem more sensible than to lock him up for a time while his family are starving, and then turn him adrift a beggar. To the creditor certainly the former course will be the more profitable, as also to Society.

"In accordance with these principles, the Bill, in the first place, provides (section 20) for the numberless petty cases in which the means of the debtor, the claims against him and his partial or total inability to satisfy them come before the Court in the course of the suit or application for execution. Where this is so, it is far shorter, simpler and less troublesome to all parties to empower the court at once to settle the matter than to let it go on through the perfectly useless, but costly and vexatious, forms of taking out execution, and applying for declaration or insolvency. Where the case is quite simple, the Court will therefore release the debtor from any balance which it is satisfied he cannot pay. When there are several creditors or other complications and the amount exceeds Rs. 50, it may at once direct the taking of insolvency-pro-

ceedings. Again, where such proceedings are instituted, either so or on the application of either debtor or creditor, ascertained insolvency will be at once admitted, and the Court will proceed to turn the available assets to the best advantage. To avoid the frequently ruinous loss through selling moveables by auction, the Court may hand over articles at a valuation made by assessors. As to immoveable property, any portion specifically pledged for a scheduled debt may be let rent-free for a premium for a term not exceeding twenty years, instead of being sold, if the debt can thereby be cleared off. Portions unpledged may be handed over for a term not exceeding seven years to the collector, who will assign to the insolvent sufficient to maintain himself and those of his family dependent on him and lease the remainder for the benefit of the creditors. In practice, the lessee will probably sometimes be a creditor, but more often the insolvent himself under due security. If the debts cannot be fully paid off by these measures, the insolvent will be discharged from the balance. The proposal which has been made that the fixed period should be subject to the life of the insolvent has been rejected as too unfavourable to the creditor. The limit of seven years has been fixed after careful consideration of the various proposals relating to temporary alienation contained in the land-sale correspondence already spoken of. If a man's debts are so heavy that he cannot clear them off in this time, it is better that he should get a discharge for the balance than that he should drag on as a slave without hope of freedom or stimulus to exertion.

VII.

"Reviewing the Bill broadly, it may fairly be said to secure, to an extent not hitherto attempted, (1) precautions against fraud by either debtor or creditor in their original transactions with each other; (2) interposition of friendly conciliation between disputants, previous to litigation; (3) approximation of the Courts to the homes of the people; (4) some small simplification of procedure and diminution of the expense and technicalities arising from legal practitioners; (5) equitable jurisdiction to reduce all exorbitant, fictitious and fraudulent claims; (6) finality of judicial decisions, subject to adequate safeguards; (7) prompt and unfailing enforcement, through the collector when necessary, of all adjudicated claims of reasonable amount; (8) discharge of the debtor from such claims, or balance of them, as, after all reasonable enforcement for a long period, could not be fully realized except by demoralization or life-long bondage.

"Such a result, while falling not short in favour of either debtor or creditor of what is fairly commensurate with the nature of the case, the anology of law in other countries, the rules of pecuniary need and supply, and the strictest equity, goes no farther in reform than the political necessity of a

prompt and effective remedy for the social disorders of the Dekkhan appears imperatively to demand.

"If I am asked what I think will probably be the effects of the measure and how far I expect it to be successful, I must reply that, although I cannot undertake to answer for all the detailed provisions of a Bill which is the outcome of revision at more hands and authorities than one, I think that it cannot but be most beneficial, and that it will to a great extent meet the needs of the Dekkhan, provided it be supplemented by executive action in the directions already indicated. Of course, no one expects from it the abolition of indebtedness for all time. The raiyats are 'depressed and crushed by a variety of concurrent causes.' With only one class of these, though, perhaps, the largest, does the Bill profess to deal, but in a way which may reasonably be rewarded with success. At least, it gives effective help to every raiyat who is disposed to help himself. The reorganization of the Courts is favourable to all parties. The relations of debtor and creditor are adjusted on fundamental principles, equitable as between the two, and essential to the cohesion of society. A man should pay what he really owes, and no more; but his creditor should not be allowed to use the State for the purpose of beggaring and enslaving him. On the other hand, we cannot justly and reasonably legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a mininum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the raiyat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do harm instead of good. With such provision, the measure will not injure the raiyat's legitimate credit, but improve it. Against all prognostications to the contrary, I set the actual facts observable in Native States. The raiyats there get all the credit that is good for them. I have no faith in the virtues of unlimited 'tick.' Borrowing, and lending with a view to securing permanent enslavement, will no doubt be checked; and so much the better. *Bonâ fide* debts should be more easily recovered, and more reasonable interest would thus be profitable. Finally, a legitimate mode, more practicable than any yet suggested, will be provided for gradually clearing off the mass of existing debt which now weighs upon the people and stops all improvement, while the great institution of the peasant-proprietary, which is at once essentially Indian and considered in Europe the best form of tenure for a free people, will not be destroyed.

"In conclusion, I have only to urge upon the Council that, while the deliberation and care with which this question has been brought to maturity are a

sufficient guarantee for the suitability of the Bill now introduced, the period which has elapsed since the raiyats first expressed discontent by outrage, the famine which has intervened, and the continued evidences of popular distress, render it desirable that the measure should be passed into law at the earliest practicable date."

The Hon'ble MR. HOPE moved that the Bill be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Sir J. Strachey, the Hon'ble Messrs. Stokes and Thompson, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover.

The Hon'ble SAYYAD AHMAD KHÁN said :—" Before the Bill goes to the Select Committee, I wish, with Your Excellency's permission, to make a few observations with regard to the principles upon which the proposed legislation is based. These observations I have handed to my friend Mr. Fitzpatrick, who, with Your Excellency's permission, will read them to the Council."

Mr. Fitzpatrick then read the Hon'ble Member's remarks as follows :—

" My Lord,—I agree with the Hon'ble Member in his motion that the Bill should be referred to a Select Committee. But before the Bill goes to the Committee, I wish, with Your Excellency's permission, to make a few observations with regard to the principles upon which the proposed legislation is based.

" It may be accepted as an indisputable principle that special laws should only be introduced to meet special cases. The disturbances in the Dekkhan which have given rise to this Bill revealed the existence of considerable distress among the agricultural classes. The causes appear to have been the following. Owing to the large exportation of cotton during the American war the prices both of that article and of all agricultural produce greatly increased. This increase led to an increase in the expenditure and in the credit of agriculturists. It also appeared to justify an increase in the Government revenue, which was accordingly imposed in some of the districts, and, as it appears, unequally. When the demand for Indian cotton fell off, the prices of all agricultural produce fell; and the fund out of which the agriculturists had to meet the increased revenue, and the debts which they had contracted, became insufficient for that purpose. Credit could no longer be procured; and the raiyats, whether instigated by disloyal persons or of their own motion, commenced to attack and plunder the houses of money-lenders, and especially of the class of Márwáris, who, being strangers, were particularly obnoxious to them. It does not appear from the evidence of the rioters taken by the Commission that these men complained of the action of the Civil Courts. Many of them asserted that they were not in debt, and others that they had

not been sued for their debts; but, seeing that the object of the rioters was not only plunder but the recovery of bonds, it seems manifest that there had been a refusal of credit, and, in all probability, threats of proceedings in Court for the recovery of outstanding debts. It also appears that, by reason of a scanty and uncertain rainfall, the productive powers of the districts are usually uncertain, and have for some years been abnormally small.

"My Lord, no doubt a case has been made out for the application of special measures of relief, and I fully admit that that relief should take the form of a law providing facilities for the release of debtors from debts which they can have no hope of discharging, and which, while they remain subject to them, deprive them of the ordinary motives for exertion—the attainment of something more than bare livelihood.

"But, my Lord, while it is desirable to give greater facilities to the raiyats of the Dekkhan, whose ruin has been accomplished by unforeseen circumstances, to free themselves from debts which paralyse their industry, care must be taken that the remedies are such as will not deter the people from having recourse to them, nor impair the credit which is ordinarily given to agriculturists, and without which they would be unable to meet the demand for revenue, or to sustain themselves from harvest to harvest.

"The requirements of the present Bill as to registration appear to me so onerous, that they will operate to deter persons from committing their transactions to writing. Registration affords a very doubtful proof of the payment of money. It is a common experience in this country that money paid in the presence of the registration-officer is in part or wholly returned when the parties leave the presence of the registrar. It is rarely denied that a transaction has taken place; but if a dispute arises, it is as to the amount received.

"The portion of the Bill which relates to conciliation also deserves serious consideration. The Bill provides for the appointment of Conciliators, who, having invited the parties to attend, are to use their best endeavours to induce them to agree to an amicable settlement. Now, the matter on which the parties are supposed to be at variance is not a mere dispute arising out of domestic or friendly relations, in which the impartiality of a stranger or the influence of a neighbour can be hopefully introduced, to persuade the parties to make mutual concessions; and, therefore, I am not hopeful that this provision will be of practical use. No doubt, a revenue-officer or a police-officer could bring influences to bear on creditors which would induce them altogether to forego their claims; but I need hardly express my conviction that the Government of India would altogether discountenance the exercise of any such influence; and I have no doubt the Council, in order to avoid even

the apprehension of its exercise, will see fit to introduce a provision in the Bill prohibiting the appointment as Conciliator of any officer exercising revenue or police functions.

"On the other hand, the attendance before the Conciliator will put the parties to considerable inconvenience. The Conciliator can only 'invite' them to attend; and if the defendant does not attend, the Conciliator may adjourn the case for an indefinite time and as often as he pleases. A claimant may have to waste any number of days to obtain relief in the most trifling case; and there is no provision to secure him compensation.

"My Lord, in my judgment there is more reason to expect that a creditor will abate his claims when the parties are brought face to face in a public Court of justice than at a private sitting held by a Conciliator; but if it is resolved that an experiment be made, at least provisions should be introduced to secure the appointment of Conciliators to whom all parties can resort with equal confidence, and to restrict adjournments.

"My Lord, I now come to the provisions relating to the procedure in the civil Courts; and before I offer any remarks upon them, I must defend my countrymen from some imputations which have been, I think unfairly, cast on them and received as true without sufficient enquiry. It is said they are prone to litigation. In those provinces in which I have acquired experience I have found no facts to warrant this conclusion. Looking to the numbers of the population and their innumerable transactions resulting in credit, the number of suits for the recovery of debt will compare not unfavourably with the statistics of any other civilised country. Creditors rarely sue their debtors unless a dispute has arisen, or unless they desire, by obtaining a decree, to secure an advantage over other creditors. Nor is it true, as has been frequently asserted, that the village money-lender generally desires to acquire the land of his debtor. He looks for the return of his money principally to the crop raised by the labour of his debtor, and takes a mortgage to prevent the debtor's making away with the crop or defeating his claim in favour of another money-lender. In the hands of the money-lender, who cannot himself cultivate, the land is worth only the rent a tenant could give for it.

"Again, in the large majority of cases the claims brought are just, and the defendants do not seek to evade them by unjust defences. I do not mean to say that there are not in this country, as elsewhere, extortionate usurers and persons who advance false claims in Courts of Justice, and also debtors who have recourse to fraud to defeat just claims; but I believe—and I have seen no proof to the contrary—that the civil Courts have, in the ordinary course of their procedure, not failed in this country more than elsewhere to detect fraud

and defeat its intended consequences. In fact, our acquaintance with such frauds is derived chiefly from the investigations of Courts of civil justice.

"I would also observe that in this country, where opportunities for small investments rarely present themselves except in the shape of loans on the security of land, there is a large number of persons who are not professional money-lenders, but who invest their savings in such securities, and almost universally charge no higher interest than the usual rate in the market. The first deviation from the ordinary procedure which I find in the Bill is the compulsory enforcement of the attendance of the defendant. My Lord, if I am right in supposing that in the majority of cases the claim is just, it follows that in the majority of cases in which the defendant does not appear it is, because he knows the complaint is just, and does not desire to lose the labour of several days, possibly at a critical season for his crop, and incur the expense of going to and from, and attending the Court. It would perhaps be sufficient to require the Court to exercise the power it already possesses, of enforcing the attendance of the defendant only in those cases in which, on looking into the account, it sees reason to believe the claim is fraudulent or extortionate. The rule prescribed in the Bill appears to me calculated to injure rather than benefit the majority of defendants.

"The provisions of the Bill which direct the Court to go into the history of the case from the commencement of the transactions, I think, also require modification. They may involve an enquiry imposing on a Court many days' labour and affording it no certain conclusions. It is scarcely reasonable to expect either of the parties to produce reliable evidence of petty money transactions extending over a number of years and commencing, it may be, a quarter of a century ago, especially seeing that the limitation-law has encouraged them to believe that such evidence would not be required of them. I therefore think some definite and not too remote period should be prescribed for such enquiries. So also a definite limit of time should be prescribed for re-opening statements and settlements of accounts. Some debts which will come before the Courts will be the result of transactions commenced and settled before the lifetime of either party to the suit. The consequence of imposing on the Courts a duty they cannot possibly discharge would be to encourage them to evade it.

"My Lord, I think it right to point out that the provisions of section 12, requiring the Court to search for a defence 'on the ground of fraud, mistake, accident, undue influence' (whatever that expression may mean) 'or otherwise,' are calculated to encourage defendants to set up false defences and to support them with false evidence; and for this reason they call for very serious consideration. Nor can I give my consent to the provisions of section 15, forcing an

arbitration on parties, whether they consent to it or not. Competent and impartial arbitrators are rarely to be found in villages; and it is one of the acknowledged privileges of British citizenship that for the vindication of right recourse may be had to Judges of whose competency and impartiality their selection by the State is a guarantee.

"My Lord, I am also unable to agree with the principle upon which section 16 of the Bill is based. The provisions of that section appear to me to be contrary to Hindú law as administered on this side of India and to general equity. If a Hindú dies leaving assets, then *whoever* takes his assets, in whatever degree he may be related to the deceased, and even if he be a stranger, is liable to satisfy the debts of the deceased to the extent of the assets, and, where such debts bear interest, with interest. This rule is common to the English and Muhammadan as well as to the Hindú law. The Hindú law does, indeed, impose a moral obligation on the descendants of a deceased person to pay his debts, and, when the descendants are related to the deceased in the first degree, with interest; but this obligation, which has not the force of law, is not enforced by the Courts on this side of India, and ought, I think, in no case to be enforced, to the injury of *bonâ fide* creditors of the descendants of the deceased.

"In section 20, which provides that a debtor, owing less than fifty rupees, who is unable wholly to pay the debt should be discharged on payment of a portion, it appears to me necessary to specify what portion he is to pay—whether it be so much as he is able or a percentage: but this point will, no doubt, receive the attention of the Committee.

"The provisions of the Bill tending to prevent the employment of vakíls appear to me to be of very doubtful expediency. Having exercised judicial functions for many years, I am bound to say the Courts receive considerable assistance from vakíls, and that the more ignorant the suitor is, the less probability is there he will be able to explain his case in the confusion he experiences in a Court of justice as well as he can to his adviser outside the Court. I would prefer to see provision made for the employment of Government pleaders to appear on behalf of debtors in all cases, rather than discountenance the employment of pleaders at all.

"With regard to appeals, which are entirely prohibited in the Bill, I admit that they entail evils, in that they prolong litigation and increase expense; but it seems to me better to experience those evils than the greater evil of imperfect justice. Cases triable by the Courts of Small Causes ordinarily present very simple issues and do not call for the intervention of a superior Court; but questions relating to land are far more complicated, and involve frequently questions on which the law is not well settled. I can see no reason why appeals

should in these cases be refused in the Dekkhan when they are allowed elsewhere. Revision is, at the best, an imperfect substitute for the right of appeal.

"For similar reasons, I consider the expediency of introducing special rules of limitation, proposed in the Bill, open to serious doubt. If it is desirable in the interest of the debtor to extend the period of limitation for the recovery of debts, the benefit should be given to agriculturists everywhere, and, indeed, to debtors of all classes.

"The provisions of the amended Code of Civil Procedure relating to insolvency will afford sensible relief—and relief that was needed—to agricultural and other debtors in all parts of the country. The insolvency provisions in the present Bill go beyond the general law. I am not prepared to dissent from them on that account; for the circumstances have been shown to justify special remedies. But the provision respecting the delivery of property in lieu of cash is anomalous. It will not, I think, be acceptable to either party, nor does it appear called for.

"With regard to section 35 of the Bill, I have only to observe that I can see no reason why a fraudulent insolvent in the Dekkhan should be exposed to less penalties than a fraudulent debtor elsewhere.

"My Lord, there is one more point to which I wish to invite the Council's attention. Admitting, as I do, that the exigencies of the case require special legislation, I entertain a serious doubt whether the rules framed in the Bill should be enacted more than as a temporary measure. Perhaps, the requirements of the case would be sufficiently met if the operation of the proposed law is limited to a certain number of years. Some of the most important provisions of the Bill relating to interest strongly resemble the laws against usury which for many years were prevalent in this country. I had some share in administering them. They were found ineffective; they encouraged fraud; they operated as a hardship upon the borrower; and as such were repealed both in England and in this country. The revival of any rules of law which limit the rate of interest or empower Courts to interfere in the terms of private contract cannot be regarded by me as other than a retrograde step—a step which, if justified by extreme emergency, should, at any rate, not be allowed permanently to affect the law, even in a small portion of the country.

"My Lord, I have ventured to offer these criticisms, not in any way pledging myself to oppose any of the provisions of the Bill, in whatever shape they may eventually come before the Council, but with a view to invite the attention of the Select Committee before which the Bill will be laid to those provisions of which the expediency appears to me to be doubtful. So

far as the Bill tends to relieve the Dekkhan raiyats from their present embarrassments it will have my cordial support. The acerbity of feeling occasioned to creditors by the discharge of their debtors will be sensibly mitigated if the just ascertainment of their claims be secured to them. But should the provisions of the Bill go to deprive them of this privilege, and so far as such provisions tend to hinder the ordinary transactions of the people and render the recovery of debts incurred hereafter uncertain, I should be reluctant to support it.

"My Lord, I should indeed be grieved if, from what I have said, it should be understood I am not cognisant of the difficulties and hardships under which the agricultural classes of India labour. I have for many years felt a deep sympathy with the raiyat, and should look upon it as a great piece of good fortune to take part in the passing of any measures which would relieve him from the miseries which indebtedness brings upon him. But at the same time I am convinced that no law can be framed which will do away with the necessity of borrowing, or, so long as the recovery of loans is uncertain and fraught with difficulty, put a stop to exorbitant rates of interest. An experience of thirty-five years, during which I had the honour of serving as a judicial officer of the Government, induces me to say that all rules which aim at regulating the rate of interest on private loans or which place difficulties in the way of their recovery, far from relieving, are injurious to the borrower, whose necessities compel him to evade the law by secret and collusive agreements of which the terms are more onerous because they cannot be enforced. The condition of the Indian raiyats not only in the Dekkhan, but in other parts of India, fully deserves consideration at the hands of the Government: perhaps in their pecuniary difficulties may be traced some of the causes which make famine so severe and oft-recurring a calamity. The question is undoubtedly momentous; and Your Excellency's administration is to be congratulated upon having undertaken its solution. But, My Lord, the solution, in my humble opinion, lies not in conferring anomalous privileges of protection against the demands of the money-lender, not in placing difficulties in the way of borrowing money, not in making the recovery of judgment-debts dilatory or uncertain—but in providing the agriculturists of India with facilities for borrowing money on moderate interest, and in making the recovery of such loans speedy and certain."

The Hon'ble MR. COCKERELL said that, whilst he readily admitted that a case had been made out for the application of some remedy, through special legislation, for the evils shown to exist in the heretofore subsisting relations between the agriculturists and the money-lenders in the Dekkhan districts, he thought the Bill before the Council aimed at a much greater interference with those relations,

and a more extensive variation of the ordinary law of the country than was necessary or justifiable; and he felt bound to record his dissent to those provisions of the Bill which in his opinion came within this designation. He considered the sections relating to the establishment of village Courts for the trial of petty cases and a system of village registration of contracts between the agriculturists and the money-lending classes, as well as the enforcement of the delivery of receipts and statements of account, as likely to prove efficacious in the removal of many of the evils now complained of. He would not object to the enactment of the conciliatory clauses of the Bill by way of experiment, though he apprehended that their effect for good or for evil would depend entirely on the character of the agency selected for the discharge of the functions of a conciliator.

If the powers conferred by the Bill were to be vested in officers trained in that school of thought which had devised some of the provisions of the Bill to which he would advert presently, the results to be anticipated could be hardly otherwise than unsatisfactory; they might be exceedingly mischievous.

The proposed abolition of imprisonment for debt had his concurrence as a measure which, if found to work satisfactorily in a limited area, might be advantageously extended at some future period to all India; and he was free to admit also that the proposed alteration of the law of limitation in regard to the recovery of debts (though personally he had doubts as to its advantage) had for its recommendation the support of the most competent authorities on such a question. He would have had no great objection to the disallowance of appeals if the unqualified power of revision to be substituted therefor were vested in the ordinary superior Courts; but he distrusted the action of a special revising agency such as was to be created under the Bill, which might be constituted so as to operate as a mere machine for carrying out the ruling policy of the day towards the classes affected by the proposed legislation.

He thought that the provisions of section twenty, which gave a discretionary power to the Court to absolve any debtor, after the partial satisfaction of a decree or claim, from his remaining liability to his creditor without any of the safeguards which belonged to the ordinary insolvency procedure, were unjust to the creditor, and wholly uncalled-for in the circumstances of the case.

His greatest objection, however, was to the provisions of chapter IV of the Bill, which contained a special insolvency procedure for the benefit of the indebted agriculturist. In the first place, it was proposed in section twenty-seven to virtually declare that no amount of falsehood or dishonesty on the part of the raiyat-debtor should deprive him of the advantages of an adjudication of bankruptcy if, as a matter of fact, he was found to be in insolvent circum-

stances. He would ask what tenable ground there could be for enacting that misrepresentation and fraud on the part of a Dekkhan agriculturist should not be attended with the same disabling and punitory consequences which would be the result of such conduct on the part of any other person. The Hon'ble Mover of the Bill had argued that, for an insolvency procedure to be efficient, the only question to be considered was whether a person seeking its benefits was in insolvent circumstances, and that, if he was, he was entitled to obtain the relief sought for; he (Mr. COCKERELL) regarded such an argument as wholly fallacious; an insolvency law was intended for the relief of honest debtors; hence, when it appeared on the face of a case that a person applying for a declaration of insolvency had been guilty of misrepresentation and dishonesty in regard to the matter of his application, he was most justly and properly thereby debarred from obtaining benefits and privileges to which from the nature of the case he was not entitled.

The next provision on which he had to comment was contained in section thirty. That provision was no less remarkable for its excessive unfairness than for the originality of its conception. After the moveable property of an insolvent had passed into the hands of a Receiver, the Court was to be allowed to interfere for the purpose of prohibiting its sale and to force its acceptance on an unwilling creditor, at a valuation made under no sort of responsibility, and consequently wholly unreliable, in liquidation or part liquidation of his claim against the insolvent.

The property so thrust upon the creditor might be wholly unacceptable quite apart from any question of a fair valuation; it might be a village pig, and the unfortunate creditor might have a conscientious objection to have anything to do with the unclean animal! It might be said, perhaps, that he was putting an extreme case; but it was a case that might well occur under the operation of the proposed section.

The provisions in section thirty-four of the Bill, which was designed to give an absolute release from all further liability for existing debt to an insolvent debtor whose available assets had been distributed amongst his creditors, had been conceived in the same spirit, *i.e.*, it was intended thereby to make a special concession to the insolvent agriculturist at the expense of his creditors which nothing in the circumstances of the case in any way justified, and this, moreover, at a time when, through the passing of the Bill for amending the Code of Civil Procedure, the general law of the country would be made as favourable to the insolvent-debtor in this direction as was reasonable, having regard to the just claims of the creditor to impartial consideration. The Hon'ble Mover had said in the course of his remarks that a man *ought* to pay what was *justly* due from him, but no more. He (MR. COCKERELL) did not understand how the proposed enact-

ment of section thirty-four of the Bill could be reconciled with that sentiment; for the effect of the general provisions of this Bill, if passed into law, would be so to scrutinise and cut down the money-lender's claims against the agriculturist that the residuum found to be due from him must surely come within the category of just debts, and leave the insolvent-debtor with no title to obtain any greater immunity from liability to meet them than was enjoyed by other insolvent debtors throughout the Empire.

He now came to the provisions which in his judgment evinced, perhaps, the greatest disregard of all equitable principles; he referred to section thirty-five which limited the power of Subordinate Judges to inflict punishment for offences under section 359 of the Civil Procedure Code to a sentence of three months' imprisonment in certain cases and one month in others—the punishment allowed in such cases by the said Code extending to one year's imprisonment. This section was so worded as to make it appear at first sight that the provision just described was a mere matter of jurisdiction; but then, even in that view, there would appear to be something anomalous in curtailing the jurisdiction which would be exercised by Subordinate Judges vested with the powers of Insolvent Courts outside of the Dekkhan in the case of the Judges upon whom as regards other matters unusually large powers were to be conferred by this Bill. But when section twenty-five, which required all insolvency cases to be disposed of by these Subordinate Judges exclusively, came to be considered in connection with this section (thirty-five), it was clearly the intention of the framer of the Bill to reduce the maximum penalty which could be imposed for offences under section 359 of the Code from one year to three months' imprisonment in some cases and only one month's imprisonment in others. Now, he (MR. COCKERELL) entirely concurred in what had fallen from the last speaker on the subject of this provision of the Bill, and he would ask why the punishment to be awarded for rascality of the kind dealt with in section 359 of the Code should be appraised by a different standard when the acts evincing such rascality were committed by indebted agriculturists? He (MR. COCKERELL) could not too strongly deprecate such class-distinction in the punishment of criminal offences as was contemplated by this section of the Bill.

The provisions of this chapter (IV) on which he had been commenting were mildly described in the Statement of Objects and Reasons as constituting a "procedure more liberal to the debtor than that of the Civil Code"; and the Hon'ble Member in charge of the Bill had endeavoured in his remarks to defend them as quite consistent with the exigencies of the case. The Hon'ble Member's explanation had in no degree shaken his (MR. COCKERELL'S) conviction as to the monstrously inequitable character of these provisions, which he would describe as marked by a degree of partiality and one-sidedness which he believed

to be without precedent in the annals of Indian legislation. He wished to be understood, however, in these remarks as not opposing the motion for the reference of the Bill to a Select Committee; but he had thought it right to state his views thus plainly in the hope that the provisions of the Bill on which he had specially commented would undergo such pruning and purging by the Select Committee to which it would be referred that the Indian Statute-book would not be tarnished by the admission to its pages of enactments conceived in a spirit diametrically opposed to that sense of fairness and strict impartiality in dealing with the interests of all parties affected by it which had heretofore characterised the legislation of this Empire.

His Honour THE LIEUTENANT-GOVERNOR said he did not wish to criticise in detail any of the provisions of this Bill, but he thought that the circumstances which had led to its being introduced were of such general prevalence throughout India that the mode in which they were to be treated in the Dekkhan might possibly form a precedent for their treatment in other parts of the country. He was not acquainted with the state of the revenue administration in Bombay, but he knew in the Panjáb there were many agriculturists and land-proprietors whose condition was very much the same as that described in the speech of the Hon'ble Member who introduced the Bill; there were parts of the country in the Panjáb, as doubtless there were in every Presidency, where the rainfall was uncertain and the crops precarious; yet in all those districts the Government had introduced its revenue system, which obliged the peasant-proprietor who had engaged for the revenue to pay a fixed sum at fixed times as Government revenue, and the Government had imposed the most stringent conditions with regard to the realisation of its own demands. It seemed to him that too little attention had been paid to this cause, which must in a great degree have contributed, if it did not entirely originate, the difficulties of the Dekkhan raiyats in the part of the country to which this Bill was to be made applicable. The peasant-proprietor who had become indebted to a banker was still obliged to satisfy the Government demand in cash: to procure that cash he had again to resort to the money-lender, and, as the Government demand came upon him at the usual season of the year with regular recurrence, he was obliged to resort again and again to the money-lender in order to procure the cash wherewith to meet it. The Government in this Bill proposed to take very stringent measures to protect the raiyat from the demands of the money-lender; but the provisions of the Revenue-law for the realisation of the Government demand had apparently been in no way altered. Every one knew the great stringency of those regulations, and it seemed to him unreasonable that, while we upheld them for the realisation of our own revenue, we should make such alterations in the ordinary law in regard to private contracts.

He thought it would have been more satisfactory if, before introducing this Bill, we had been told what measures the Bombay Government proposed to take in order to lighten the burden which the payment of the Government revenue demand imposed upon the peasant proprietor. He thought it desirable that, at the same time as measures of relief were afforded to the raiyat from his private creditor, the Government, which appeared as a public creditor of the raiyat, should also take measures to in some way lighten the pressure of its own demand—not perhaps by reduction of assessment, but by taking that assessment in some other way which would not impose upon the raiyat the burden of meeting all the risks of a scanty rainfall and a precarious crop, but would leave those risks on the Government itself, and relieve the peasant-proprietor, who had shown himself unfit to meet them. He thought there was considerable danger in altering the ordinary law of contract in the manner now proposed in this Bill in the case of agriculturists, unless Government itself took measures to relieve the burden which it had itself imposed upon them.

The Hon'ble MR. STOKES said :—" I shall vote for referring this Bill to a Select Committee, and I do not intend, either now or hereafter, to oppose it, so far as it carries out the express orders of the Secretary of State, that is to say, so far as it requires the Courts to enter into the merits of all money-claims by saukárs against Dekkhan raiyats, and forbids them to compel a raiyat to pay a saukár compound interest, or an amount of interest exceeding the principal sum lent; so far as it provides that the principle of the Presidency-towns Insolvent Act (11 & 12 Vic., c. 21) shall be extended to the Dekkhan raiyats; that their land shall not be sold in execution, unless specially pledged by a bond duly registered; that the number of Courts with Small Cause jurisdiction shall be increased, so that there shall be at least one within reach of every raiyat's home; and that Courts of Conciliation shall be established.

" Those instructions have been accepted by the Government of India in its executive capacity, and I am not now going to raise any question as to the necessity or propriety of such acceptance. I may, however, remark that the Bill, so far as it requires the Courts to enter into the merits of money-claims, is simply declaratory of the existing law : so far as it provides a special law of insolvency, it is, to my mind, rendered unnecessary by the great extension which the Select Committee on the Bill to amend the Code of Civil Procedure has recently given to chapter XX of the Code—an extension of which the Secretary of State was not, and is not, fully aware; and, so far as it provides for multiplying Courts with Small Cause jurisdiction, all that is really needed may be done by executive orders under section 3 of Act XI of 1865 and section 28 of Act XIV of 1869.

"The remarks with which I shall venture to trouble the Council have reference merely to the additions which the Bombay Government and the Hon'ble Mover have thought fit to make to the simple scheme recommended by the Secretary of State. It seems to me that, in framing a measure of which the policy is, to say the least, questionable, we should not go an inch beyond the instructions which the Indian Executive is bound to obey; and that we should all, whether we are ordinary Members or Additional Members of this Council, regard with the utmost jealousy accretions as to which the authors of the Bill have wilfully abstained from consulting the Bombay High Court Judges and other persons of judicial experience.

"The first of these accretions to which I shall call your attention is section 73—

"No appeal shall lie from any decision or order in any suit or proceeding before a Subordinate Judge under this Act.'

"The effect of this section, coupled with section 3, will probably be the reverse of what is intended. It shuts out from appeal the decisions in almost all mortgage-suits. The object of doing so is, of course, to relieve indebted raiyats from expense and prolonged litigation. But, first, I am informed by Mr. Justice West that in the Bombay Presidency the Courts of first instance, in dealing with these suits, usually apply the harsh letter of the law in favour of the creditor. Relief is got from the higher Courts, in which modifications favourable to the raiyat are much more frequent than those in favour of the saukár. And, secondly, the useful power which the Appellate Court now possesses under section 551 of the Code of Civil Procedure of confirming the decision of the lower Court without sending or serving notice has in most cases rendered the cost of an appeal quite insignificant. The result of this part of the Bill will therefore be, on the whole, to place the indebted raiyat in a worse pecuniary position than he is in at present. As to cutting off all appeals in order to shorten litigation, the remedy will be worse than the disease. Let us remember that, in the absence of an appellate Court, the Judges of first instance will have no one (as Bentham says) 'to stand in awe of.' The errors arising from corruption, incapacity, laziness, precipitation, ignorance and love of arbitrary power, which are certain to be committed in these difficult land-suits, especially where the Judges are inexperienced and unaided by a Bar, will remain uncorrected and cause hardship and discontent. The barring of an appeal in cases of the Small Cause type (suits for debts, damages or moveables not exceeding Rs. 500 in amount or value) may be justified, because, as a rule, those cases are simple and easy, and practically it is better, on the whole, for the community that in such cases the decision should be

rapid than that it should be careful and correct. But mortgage-cases sometimes involve the investigation of difficult questions as to title, priorities, marshalling securities, contribution and rights of maintenance, and always the taking of complicated accounts. A Judge who does all this rapidly will simply scamp his work; and the power of calling for and revising his imperfect records will, as I shall show, be a very inadequate substitute for an appeal—a remedy which, wherever wrong has been done, the appellant's interest urges him to apply.

"The effect of abolishing appeals should also be considered in connection with the rule as to *res judicata* (Code of Civil Procedure, section 13). It seems to me that great hardship may sometimes be caused by regarding (as we must, if the Bill is passed in its present form) the uncontrolled judgments of these subordinate Courts as conclusive on questions of title to land. We may, of course, insert a clause declaring that, for the purpose of section 13 of the Code, no Court trying a suit under this Bill shall be deemed, as regards the title to immoveable property in respect of which the suit is brought, a Court of competent jurisdiction. But, then, suitors would be exposed to the harassment of repeated litigation, which the rules as to *res judicata* has been framed to prevent.

"The power given by section 51 to the Special Judge to call for and examine the records of suits tried by Subordinate Judges is intended as a substitute for appeals. But, first, the records of cases tried by second class Subordinate Judges at Rs. 150 a month will, it is safe to say, generally be defective; and the Bill (section 11) expressly provides that in the bulk of cases (those of which the subject-matter does not exceed Rs. 10 in amount or value) there need not be even a memorandum of the evidence. Under the Bill, therefore, the revising Judge will constantly have to exercise his jurisdiction on imperfect materials.

"Secondly, the revising Judge, no matter how carefully he is selected and how highly he is paid, will be greatly inferior in learning, ability and experience to the Judges of the High Court, who now form the ultimate Court of appeal in the Presidency. The result will be that rights will be established all over the Dekkhan, founded on the Judges' crotchets and erroneous ideas of law, and the greatest confusion and hardship will result when these rights are upset (as they are sure, at last, to be) by the High Court or the Judicial Committee of the Privy Council.

"Thirdly, those records, if, as I suppose, they resemble the Bengáli *nathís*, will be masses of ill-written documents in a Native character and language which, it is safe to say, no revising Judge will have time or skill to decipher and translate. The business of revision will, therefore, practically be placed in the hands of the sarishtadárs, who are notoriously open to the saukárs'

bribes; and here, again, the Bill will work to the injury rather than the benefit of the raiyat.

"Another mode in which it seems to me certain that the provisions of the Bill will be used to injure the raiyat is suggested by sections 45 and 46. Those sections provide that when the parties to a case before a Conciliator (who is intended to represent in India the French *Juge de Paix*) come to an agreement finally disposing of the matter, the agreement shall be reduced to writing and signed, and that the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides. The Bill then proceeds thus—

'The Court which receives the agreement shall order it to be filed; *and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.*

"It requires no power of divination to say how this provision will work. The saukár will say to the raiyat, who, we are told, is generally weak and apathetic: 'I will lend you the Rs. 50 for which you ask; you need not give me a mortgage, and you will thus not have to pay the Sarkár anything for stamps or registration fees. We can arrange the matter thus. I shall apply to the Conciliator 'to effect an amicable settlement' between us, and you will come with me before him and agree to pay me Rs. 100 three months hence.' The wretched raiyat will have to do so and the saukár, chuckling at the ease with which he twists a foolish law to his own advantage, will see the agreement taking effect as if it were a decree 'from which no appeal lies.'

"Chapter VIII, which requires all money-obligations executed by raiyats to be written by or before village registrars, also seems to me a specimen of blundering benevolence. The chief result of this well-meant attempt to ensure the authenticity of documents will, I am certain, be to discourage the use of written agreements, and to force *oral* contracts on persons who would otherwise have expressed themselves in writing. I need hardly say that this is impolitic and contrary to one of the wisest aims of our recent legislation. If the scheme succeeds, it will also add greatly to the cost of all loans, such cost falling finally on the raiyats, who cannot pay their revenue without occasionally borrowing. But wherever saukárs are concerned the scheme is, I think, pretty sure to fail. The saukár will give up mortgages and written instruments altogether. He will say to the raiyat: 'I will lend you money at 60 per cent.; but mind, if you do not repay me on the day fixed, I shall never lend to you again, nor will any of my brother-saukárs.' The raiyat will borrow on the terms proposed, and his last state will be worse than his first.

"Section 69 declares that, in awarding costs in suits before Subordinate Judges in which the subject-matter does not exceed Rs. 100 in amount or value, nothing shall be allowed, unless the Court is of opinion that professional assistance was necessary. This, I fear, will practically exclude pleaders from appearing in most of the difficult mortgage-cases cognizable by Subordinate Judges. Now, on this point I have only to say that the experience of India and of every other country in the world proves that an honest, learned and independent Bar is of the greatest advantage to the Judge in the trial of complicated cases. And if the Bombay pleaders are, as a rule, honest, learned and independent (as to which, not having the needful local knowledge, I offer no opinion), the exclusion of them will be a public calamity as well as an unmerited slur on an honourable profession. It may be true that some of them are dishonest and ignorant; but the arbitrary exclusion of the whole body from their proper functions will deprive the peccant members of all chance of improvement, render them discontented and dangerous, and compel them to earn their livelihood by all kinds of dishonourable practices. To draw the line at Rs. 100 or any other amount is absurd; for the difficulty of a mortgage-case does not vary directly as the amount involved. To give the Subordinate Judge power (as is done by section 69) to refuse any pleader's fees will obviously tend to excite suspicions of favouritism, whenever the Judge grants those fees, and to destroy that independence of the Bar which, for the sake of the Bench as well as the suitors, a wise Government ought to encourage. Lastly, if, as is probably the case, the legal profession in the Bombay Presidency is as influential as it is elsewhere, to make this powerful body of men bitterly hostile to the Bill seems to me the most certain mode of ensuring the failure of the experiment which it has been framed to try.

"The provisions which I have hitherto noticed are, in my opinion, unwise; but those to which I shall now ask the attention of the Council are grossly unjust and (if I may use the expression in India) unconstitutional. Both section 20 and section 49 are retrospective in their operation. They relate to decrees passed *before* the proposed Act will come into force, and the former section at least seriously interferes with the vested rights of the holders of such decrees. Section 20, paragraph 1, runs as follows:—

'When a decree has been passed, *whether before or after this Act comes into force*, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, whether in the course of execution of the said decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of *a portion of the same, and grant him a discharge from such* [sic] *balance.*'

Under this section, therefore, if a man (whether he be a saukár or not) has before the first of October, 1879, obtained a decree against a raiyat for

Rs. 49, the Court, if it is satisfied that there is no other claim against the raiyat, that he is unable to pay more than Rs. 48, but that he is quite able to pay that amount, may direct him to pay only *one* anna, and grant him a discharge from the balance. Surely such a provision was never before proposed for the consideration of a legislature! Section 49 declares that no application for execution of a decree passed before the proposed Act comes into force 'to which any agriculturist residing within any local limits for which a Conciliator has been appointed is a party' shall be entertained by any Civil Court unless the decree-holder produces a certificate under section 48. When the judgement-debtor refuses (as he often will) to appear before the Conciliator, the decree-holder cannot execute his decree until the expiration of that incalculable space of time which the Bill describes as 'such period as the Conciliator thinks reasonable.' Section 30 is also retrospective. It runs as follows:—

'Whenever any moveable property of an insolvent is liable to be sold by a receiver under section 356 of the said Code, the Court may direct that it shall not be so sold, and may, after recording the opinions of two Assessors appointed by the Court in this behalf, determine the value of such property and direct the receiver to transfer it to any of the scheduled creditors who may be entitled to receive in the distribution under the said section 356 an amount equal to or greater than the value so determined; *and such creditor shall accept such property in full or partial liquidation (as the case may be) of the amount to which he is so entitled.*'

A creditor who before the first of October, 1879, has contracted to be paid in money may be compelled, under this wonderful section, to receive payment of his debt in old brass pots, or worn-out bullocks, or village-pigs, or anything else which he does not want and which he may be unable to sell. I believe that the Hon'ble Mover is the sole author of this section—at least I can find nothing about it in the letter from the Bombay Government. Remedial statutes may be retrospective when they only go to confirm rights already existing and add to the means of enforcing existing obligations. But sections like these, that disturb absolute vested rights against which there is no equity, are founded on unconstitutional principles, and I, for one, will never be a party to passing them into law."

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"At this late hour I will detain the Council by a very few remarks. This Bill, which has been placed in charge of the Hon'ble Mr. Hope by the Executive Government in consideration of his experience in the districts now in question and of the attention which he has given to the subject, is in a great measure based on a draft Bill which was sent up to the Government of India by the Bombay Government, and in the preparation of which Mr. Hope's aid and advice were made available. I have

no doubt that, if the Bill had emanated entirely from the Executive Government of India it would have assumed in some matters of detail a very different shape. There are several provisions in the Bill with which I, for one, am unable to agree; but, as regards the general scope of the Bill, apart from those particular provisions, I feel bound to say that I consider that a sufficient case has been made ou for special legislation, and that I approve of certain leading principles which th Bill embodies. On the other hand, I think that there is great force in many o the remarks which my hon'ble colleague Mr. Stokes has made regarding the sec tion which bars appeals in cases of claims founded on mortgages. I personall entertain very little doubt that, when the Bill has undergone that examinatio and sifting which it will undergo at the hands of the High Court of Bombay an of other judicial authorities, and when it has been examined and revised by th Select Committee, that section will, if it does not entirely disappear, be ver materially modified. In all that Mr. Stokes has said on the subject of thos provisions of the Bill which provide for supervision and inspection in lieu o appeals I entirely concur. I may also say that I agree with my hon'ble colleague, Mr. Cockerell, in thinking that several of the insolvency provisions are exceedingly questionable. My impression is that it will be found that the insolvency-law which we hope to see enacted in the course of a few days in the Bill amending the Code of Civil Procedure will be found sufficient for the particular districts which are dealt with in the project of law now before us, as well as for the rest of India. However, I think it was only right that, looking to the circumstances under which the Bill has been framed, we should send it forth for criticism and examination, not exactly in the shape in which we, looking at the question from our point of view and not from the local point of view might be disposed to regard it, but that we should pay very great deference to the suggestions made by the Local Government, and afford every opportunity for those suggestions being examined and criticised in the Presidency to which the Bill refers.

"There are one or two points in connection with the address which was delivered by the Mover of the Bill on which I should wish to say a few words. The full and exhaustive and, I am bound to say, very interesting and suggestive, address to which we have listened this morning shows that the Hon'ble Member has exhausted every source of information which was available to him. It shows that he has carefully studied the Report of the Commission which has led to this project of law, and the correspondence which during a long series of years has passed on the particular subject to which this project of law refers, and on other subjects cognate to it. Naturally, in the Hon'ble Member's address a great deal was taken from the Report of the Dekkhan Riots Commission. From that report he was able to adduce a great deal of evidence in support of

the views which he individually entertains: But it struck me that on one or two points on which, as I read the report of the Dekkhan Riots Commission, the opinions expressed by the members of that Commission seemed to differ from those entertained by the Hon'ble Member, he failed to give us the benefit of the observations which are to be found in the Commission's Report.

"I do not think that the tone in which the Hon'ble Member expressed himself with regard to the character of the saukárs in the Dekkhan districts is by any means fully supported by the text of the Commission's Report. The Hon'ble Member used the expression 'usurious money-lenders.' He said many other things which, as his address was read rapidly, I cannot repeat *verbatim* but which gave me the impression that he regards the money-lenders of the Dekkhan districts as a class, with scarcely an exception of usurious and rapacious men—a class of men who make enormous and extravagant profits at the expense of the ignorant raiyat, and a class against whom it is desirable that the Government should direct very stringent legislation.

"Now, it seems to me that this is not the view held by the Members of the Commission. On the contrary, I find it expressly stated, in the 85th paragraph of their report, that 'on the whole there is no reason to believe that the saukárs dealing with the agricultural classes make higher profits than are warranted by the nature of their business, which is always precarious and unpopular—occasionally, as we have seen, dangerous.' There are other passages in the report on which I cannot lay my hand at this moment which convey to my mind a similar impression; and I think it would be wrong that this Bill should go forth to the public or to the people of the districts which it will affect with the impression that the Government of India entertain in regard to this particular class of the community—a class more or less intelligent, which is really very useful, and the existence of which in the circumstances of the country is an absolute necessity—views such as those which appear to be entertained by the Mover of the Bill. I have no doubt that among this class, as among other classes of money-lenders in other parts of the world, there are many black sheep, and that here, as elsewhere, there are instances of gross extortion and rapacity; but I do not for a moment believe that the case is nearly so bad—that the class, as a class, is so extortionate and such a curse to society—as might be inferred from some of the expressions used in the Hon'ble Member's address; such expressions, for instance, as that 'money is lent designedly to render the raiyat a bond slave;' or that 'fraud by the creditor is, in India, the only thing to be guarded against.'

"On another point it appears to me that the remarks of the Hon'ble Member are not borne out by the Report of the Dekkhan Riots Commission. I

refer to the alleged technicality of the procedure of our Courts. Nor do I think that those remarks are borne out by the actual facts of the case.

"In the 116th paragraph of the Report of the Commission I find it stated that 'upon these and similar statements the first remark we have to make is that it is a mistake to suppose that Courts in India are bound only to administer law in the strict sense in which the term is here used. They are distinctly Courts 'of equity and good conscience' as well as of law. Secondly, it is certain that the laws of this country, as, for instance, the Contract Act, the Evidence Act and the Civil Procedure Code, are as little open to the charge of technicality as any laws can possibly be.'

"I listened with great attention and with great interest to the speech of our hon'ble colleague Sayyad Ahmad Khán, the Native Member of this Council, and the only Native Member present. One of the observations made by him which particularly struck me, was that in which he expressed his opinion as to the expediency of prohibiting in this Bill the appointment of revenue or police officers as Conciliators. I agree in every word which the Hon'ble Member said on this point; and I trust that in this respect the Bill will be amended by the Select Committee. On the other hand, I do not agree in all that the Hon'ble Member said in regard to the Limitation-law. The alteration of the Limitation-law for these districts, and I should think for the country generally, in the direction in which it is proposed to alter it in this Bill seems to me to rest on very substantial grounds.

"There was one remark made by my hon'ble colleague Mr. Stokes at the commencement of his speech in regard to the scope of the Bill, with reference to the instructions which we have received from the Secretary of State, with which, if I understood him correctly, I am unable to concur. I do not conceive that this Government is either positively bound to enact every provision which was recommended in the despatch of the Secretary of State, or that it is debarred from going beyond those provisions, if, on full consideration, it appears to us that the main object which the Secretary of State had in view will be advanced by our enacting additional provisions which were not contemplated by him. Everything that the Secretary of State has written on the subject of this Bill, as well as on all other subjects, whether relating to executive or legislative matters, is entitled to the most careful and respectful attention of the Council of the Governor General. But it does not appear to me that in such a case as this, or indeed in any case, the Government of India is precluded from deviating from the letter of those instructions; or, at all events, from urging their reconsideration, if such a course should be deemed necessary. I conceive that it is quite open to us, if any of the provisions recommended by the Secretary

of State to be inserted in a project of law appear to us to be either inexpedient or impracticable or inadequate, to make such alterations or additions as we deem to be required.

"It only remains for me to advert to the remarks made by His Honour the Lieutenant-Governor—remarks for which I think the Government and this Council are very much indebted to His Honour—because it is very desirable that it should be known to the public generally, and to the community which will be affected by this Bill, that the question raised by the Lieutenant-Governor has not been overlooked by the Government of India; that, on the contrary, the view which is entertained by the Government of India on that particular question is, I may say, entirely in accordance with the opinion expressed by Mr. Egerton. With the permission of your Lordship, I will read the concluding paragraph of the letter which was addressed to the Government of Bombay previous to the preparation of the draft Bill, which, as I have said, formed the basis of the Bill now before the Council. After making various observations, which form the subject of fifteen paragraphs of the letter, in regard to the general scope and tenour of the projected legislation, the Government of India expressed themselves as follows on the particular point to which the Lieutenant-Governor alluded:—

'There is one point, however, which, although it may positively not involve legislation, appears to the Governor General in Council to demand further consideration from the Bombay Government, namely, *the possibility of adapting the assessment of the land-revenue to the variations in the season.* This question is discussed in paragraph 10 of the Bombay Government letter of the 6th April, 1877. The Governor General in Council fully agrees in the view that, in ordinary cases and where the land-revenue is moderate, it would not be good, either for the raiyats or for the public treasury, that the land-revenue demand should fluctuate. But the system which is best for districts enjoying an ordinarily regular rainfall may not be the best for the arid tract of the Central Dekkhan, where (it is said that) a good rainfall comes only once in three years. In view of the very great fall of prices and the vicissitude of season in the Dekkhan during the last few years, it would be desirable that the present Government of Bombay should consider whether the recent (1873—75) revisions of the revenue have given sufficient relief from an assessment which was based, in part, on an unduly high estimate of the normal value of field produce in the Dekkhan. And, further, the Governor General in Council would wish the Government of Bombay to consider whether in these four districts, or in parts of them, it would not be wise to have *a varying scale of revenue* demand to be applied in unfavourable seasons, whereby the normal assessment might be reduced by a certain percentage over an entire district, or division of a district, in the event of a failure of rain or other cause of serious damage to the crops.'

"These instructions expressly refer only to the four districts included in the scope of this Bill; but I quite agree with His Honour the Lieutenant-Governor that they are instructions which are probably very applicable to many other districts, not only in Bombay, but in other Provinces in other parts of the

Empire. And I may mention that at this moment, and for some time past, the expediency of applying such a system to another district in another part of India—I refer to the district of Jhánsi—is, and has been, under the consideration of the Executive Government."

His Excellency THE PRESIDENT here adjourned the debate to the following day, and the remainder of the business was proceeded with.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Foreign Jurisdiction and Extradition Act, 1872. He said that the eighth section of the English Extradition Act of 1870 empowered a Magistrate, when any person was charged with having committed an offence abroad, to issue a warrant of arrest in anticipation of a request being made for extradition by the State within whose limits the offence had been committed. Sections 19 and 20 of Act VII of 1854 contained similar provisions; but they were omitted in Act XI of 1872, the present Extradition Act, which consolidated and amended the existing law on the subject. It was, he believed, supposed by the framers of that Act that the matter was sufficiently provided for by the Code of Criminal Procedure, section 157. But that section seemed limited to the case of offenders whom some Court in British India would have jurisdiction to try, and would therefore not cover the case of a foreigner who had committed an offence at some place beyond the limits of British India. Section 194 of the Code was equally inapplicable. Certain recent cases in which subjects of the Nizam had stolen bullocks and committed other offences in the Nizam's territory, and then taken refuge in British India, had shown that some such provisions as those of Act VII of 1854, sections 19 and 20, were still required to prevent failures of justice. The present Bill, which had been prepared to meet this want, practically re-enacted, with certain unimportant modifications, what was the law in India up to the year 1872.

The Motion was put and agreed to.

LOCAL AUTHORITIES LOAN BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Local Public Works Loan Act, 1871. He said that section 3 of the Local Public Works Loan Act, 1871, prohibited the Trustees of the Port of Bombay and the Commissioners for making improvements in the Port of Calcutta from raising money on the security of their funds and the property vested in them, except in the manner provided by that Act; and, as the prohibition was imposed by an Act of the Governor General in Council, it was one from which the local legislature could not relieve those bodies. This had been found to lead

to some inconvenience. The Municipalities of Calcutta, Madras and Bombay were exempted from the prohibition in question; and there appeared to be no reason why the Commissioners or Trustees of the Ports of Calcutta and Bombay, and any similar body which might hereafter be created at Madras, should not likewise be relieved from it. The main object of the present Bill was to provide such relief; but the opportunity had been taken to re-enact the Local Public Works Loan Act with a view to removing certain difficulties of construction which had presented themselves in the working of it and to making the Act express in clearer terms what was understood to have been the intention of its framers.

The Motion was put and agreed to.

The Hon'ble MR. STOKES introduced the Bill and read the clause exempting from its provisions the Commissioners of the Port of Calcutta, the Trustees of the Port of Bombay, and any similar body that might hereafter be created at Madras.

The Hon'ble MR. STOKES then applied to His Excellency the President to suspend the Rules for the Conduct of Business. The matter was one of much urgency, as the Bombay Government and legislature desired to confer borrowing powers at once on the Trustees of the Port of Bombay, and this could not be legally done unless and until the present Bill was passed.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Oudh.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES presented the final Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

The Council adjourned to Friday, the 18th July, 1879.

SIMLA;
The 17th July, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Thursday, the 10th July, 1879, was adjourned to Thursday, the 17th July, 1879.

Government Central Press.—No. 447 L D.—13-2-80.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws aad Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council assembled at Government House on Friday, the 18th July, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir John Strachey, G.C.S I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

DEKKHAN AGRICULTURISTS RELIEF BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble MR. RIVERS THOMPSON said:—"My Lord, in the very few remarks which I wish to offer on the resumption of this important debate I have no desire to question the propriety of the free and impartial criticisms which have passed upon many details of the Bill before the Council, but would prefer to confine myself to the general aspects of the measure; because I think, from the tendency of many of the observations which we heard yesterday, it would seem as if we were losing sight of the main principles which we wish to maintain, and of the causes which have led to the interference of the Government in a matter which, if special reasons did not exist, it would have been right to leave to the ordinary laws and procedure of our Civil Courts. For my own part, I tàke no exception to the severity of those criticisms; for I think when a case of such grave and far-reaching importance, and one which has occupied the attention of Government for many years, comes before the Legislature of the Supreme Government, it is necessary and desirable, and not incompatible with an earnest desire for an

effective solution of long-standing and serious difficulties, that there should be the most unqualified freedom of debate. I think it right to express this opinion very decidedly, because, obviously, we are not dealing with a sudden emergency of the immediate past, nor with a question in which unanimity of opinion has always existed as to the relief to be afforded, but one the magnitude of which has claimed the close attention of successive administrators in the single Presidency affected by the Bill, and for the remedy of which innumerable proposals have been put forward by the most experienced officers upon whom it has devolved to consider the matter. In confirmation of this view, I would refer the Council to the single page at the beginning of the second volume of the Commission's Report, from which it will be seen that this complicated question of the Dekkhan raiyats' indebtedness and troubles has since 1843-44 been continuously before the Local Government; and in the *précis* of correspondence on the remedial measures from time to time under notice, we find the recommendations of the Bombay Government in 1844; suggestions by the Chief Justice in 1863; proposals by Captain Wingate in 1852; by Mr. Fraser Tytler in 1859; by the Hon'ble Mr. West's pamphlet in 1872, and by Mr. Pedder's report about the same year. Even of these it is said that the summary covers but a fractional part of the recommendations with which the Bombay records abound.

"With such facts before us, it is inconceivable, in the first place, that any single measure, and that referring chiefly to the procedure of the Courts, should provide the complete cure of evils of such great intensity and arising from such a vast variety and combination of causes; and, secondly, it is impossible that, constituted as this Council is and representing the different experiences of different parts of the Indian Empire, even that single measure, framed on exceptional lines for a special object and to be tentatively applied, should not elicit a diversity of opinion on many of its details. For myself, therefore, I may say that, while I listened with the greatest interest to the speeches of Hon'ble Members objecting to detached provisions of the Bill, and value their contributions so far as they demand a careful scrutiny of the impugned sections, I maintain still the necessity which is imposed upon us as the Government of the country to support the leading principles on which the Hon'ble Member in charge of the Bill would propose to legislate. At this stage—the second reading, if I may so call it, of the Bill—it would have been open to any Member, as I understand the rules, to attack the principles of the measure and to oppose its reference to a Select Committee. I am glad that no such course has been taken. It seems to me that, having regard to the time and labour which preceded its introduction—to the urgent request of the Local Government for such a law—and to the correspondence which has passed with the Secretary of State, it would have been unreasonable to have done so. And if in some of its features

it still appears open to objection, I would remind the Council that the Bill has still to go to the Bombay Government for reconsideration, with a request that it may be submitted to the learned Judges of the High Court of that Presidency, and that, when their views upon the measure have been received (and I have no doubt their attention will be directed to all the points of difference which this debate has brought out), it has afterwards to undergo a detailed revision by the Select Committee here. There is thus ample security that no hurried or imperfect project of law will issue from this Council.

" I take it that the general view in which we may regard the position of the question, so far as this Bill is concerned, is that, upon the evidence adduced by the Commission, which gives no uncertain sound in the matter, the districts of the Dekkhan, with an impoverished and ignorant population, are suffering from our having imported into them laws and institutions suited only to an advanced and educated community ; and that, where the people are not educated and not prepared for an elaborate and technical procedure in the administration of the law, we are bound to introduce for their benefit some simpler form for the adjustment of their numerous disputes. I share in no way the sentiments expressed by the Hon'ble Member from Bombay as to the character and effect of the regular civil code procedure upon the country. Though I do not remember his exact words and am unable at this moment to refer to his speech, I think I am not incorrect in stating that he looks upon the 650 sections of the Civil Procedure Code as a burden too heavy to be borne by India, and as a curse from which it should be relieved. It requires no words from me to rebut such radical sentiments ; but, if the Hon'ble Member considers that his present scheme of procedure in civil actions between creditors and debtors is a model for general imitation, or is capable of extension to all classes of the people and to all parts of the country, I am sure not only that he will be disappointed in his expectations, but that most people will rejoice at his disappointment. On the exceptional grounds that we are in the presence of a great calamity, I am prepared to support this Bill. That calamity in the Dekkhan is due in part to the caprices of climate and to the natural evils to which all Indian agriculture is exposed, and which no Government action could prevent or anticipate. But, so far as it is in our power to help, by the establishment of special courts, by an increase in the number of the Judges, and by the substitution of less complex rules and laws of procedure, in the settlement of difficulties for which, in an embittered social condition especially, our present law is unsuited or inadequate, I have accepted this measure as a tentative proposal for the relief of the emergency. In that character I am ready to support it as desirable for the present need ; and in that character I am prepared to favour any reasonable amendments when they come before us for later consideration.

"At the same time, My Lord, I think we must all feel that, however necessary and urgent this present measure of legislative reform is, it is but a small instalment of the remedies which the disorder demands. We have to deal with a case of poverty, ignorance and indebtedness among the people prevalent in these districts for a long series of years, dating, I believe in some parts, to a period antecedent to our advent as rulers; and a heavy responsibility rests upon the Local Government to meet the claims of the case by liberal administrative arrangements. The country possibly needs the introduction of a system of canal irrigation, and it certainly will not suffer by the extension of its schools and the improvement of those which are already in existence. I hope the attention of His Excellency the Governor of Bombay will be attracted also to the remarks of my hon'ble friend the Lieutenant-Governor of the Panjáb as to inflexible terms under which the Government revenue is realized; and, though the difficulties of that problem are great in the presence of what I believe to be generally a light assessment, the attempt to solve that problem and the caution necessary at the revision of settlements in the matter of the enhancement of the land-revenue will receive, I am satisfied, the consideration which the great importance of the subject demands at the hands of the Bombay Government."

The Hon'ble SIR JOHN STRACHEY said:—"I hope I shall not detain the Council for any length of time to-day, but I do not like to remain altogether silent when a subject of such importance is under discussion. The subject, although, no doubt, it now comes before the Council in an extreme and aggravated shape, is one which has occupied the minds of Indian statesmen for a very long time past,

"I myself have repeatedly had to take part in discussions which have virtually been identical with those in which we are now engaged, and my hon'ble friend Mr. Hope did me the honour to quote opinions which I expressed some twenty years ago. Consequently, whatever may be the value of my 'prophetic strain' in judging what the effect of this measure may be, I may at any rate claim the qualification of 'old experience.'.

"I may say, in the first place, that I think the Government and the public are greatly indebted to Mr. Hope for the able and interesting account which he gave to us yesterday of the unfortunate condition of these districts of the Dekkhan and for the Bill which the Bombay Government has prepared in communication with him; and I think that we are the more indebted to Mr. Hope for the great care that he has given to this question: and this Bill is the more important because, unfortunately, a great deal that has been said is true, not only of the Dekkhan, but of many other parts of India also. I think my

hon'ble friend Mr. Colvin could tell us very nearly as lamentable a story about the state of Jhánsi as Mr. Hope has told us regarding the Dekkhan; and I am afraid others could tell us equally lamentable stories about some other parts of India. These of course are, nevertheless, extreme and exceptional cases; for, taking India as a whole, it is, beyond a doubt, a happy and a prosperous country. Nevertheless, much that we have been told of the state of the Dekkhan is more or less true of the peasantry in some other provinces, and, therefore, although the problems now before us possess special local urgency, they have also a more general interest, and I think there can be no doubt that the success or failure of the experiment which we are now about to try may have results which will extend far beyond the limits of the Dekkhan.

"My Lord, I do not propose to criticise any of the details of this Bill, and there is a good deal in it which I, for my part, do not feel competent to criticise; for there is much in it which requires local knowledge, without the possession of which no useful opinion can, in my opinion, be given. While the Government of India is entirely responsible for the general principles on which this Bill is based, and while the Executive Government has been unanimous in accepting those principles, which have been most fully and most carefully considered, the Bill is in its details essentially a local Bill; and, in judging of these details, I think that local opinion must to a very great extent guide us. The discussion of yesterday shows, as my hon'ble friend Mr. Thompson has justly observed, that in regard to the details of the Bill there will be a very great diversity of opinion; but I agree with Mr. Thompson in the satisfaction he expressed that nothing that was said yesterday, so far as I can judge, touches really the main principles on which the Bill is based. The matters referred to yesterday are, after all, all, or nearly all, matters of detail, which, until they are fought out and decided in the ordinary way by a majority of this Council, we must be content to differ about.

"No one has denied the necessity for special legislation to meet the great evils which have been described. We desire to give to every man the means of cheap and speedy justice near his own home: and cheap and speedy justice means the simplest possible procedure of the Courts, and we desire that these Courts should be Courts of equity in the broadest sense, doing simple justice between man and man, and creditor and debtor alike. We desire also, further, that every effort should be made to bring about amicable agreements without imposing upon debtors and creditors the necessity of going into Court at all by the establishment in some form or other of Courts of Conciliation.

"Speaking of justice to creditors, I may say that I think that justice has hardly been done to Mr. Hope by some of the remarks which have been made in criticism of his speech of yesterday.

"I do not understand that Mr. Hope made any such general attack upon the creditors as has been attributed to him. I understood him to recognise in the clearest way that the money-lender is an essential element in the agricultural system of the Dekkhan and of India; and he quite admitted that protection and security for the creditors were as necessary as protection for the debtors.

"It would be a great misfortune and mistake if people were to suppose that the Government approved the idea of a crusade against the money-lenders. Money-lenders are obviously as necessary to the Indian agriculturist as the seed which he sows, or as the rain which falls from heaven to water his fields. Agriculture without them would probably be impossible; but, while I believe this of the money-lenders, and have no doubt it is quite true that vast numbers of them—I hope I may say the great majority of them—are honest and honourable men, it seems to me that it is impossible to ignore the vast amount of evidence which exists in proof that there are still very many of them who deserve a different character, and that this section of the money-lending class is so numerous that it has become absolutely necessary to give to the debtor some better protection against it than is now available. In regard to these questions between creditor and debtor, there have always been two great parties; and it is inevitable that the old discussions on this subject should again be entered into in regard to the Bill now before the Council. With reference to this question, I should like, with your Excellency's permission, to read to the Council a passage from the admirable speech made by Sir Arthur Hobhouse on the 28th March, 1877, on the Code of Civil Procedure. It appears to me entirely applicable to the present case, and I think that it serves excellently to illustrate the principles upon which we are now proposing to legislate. Sir Arthur Hobhouse said:—

'I will try to show what seem to me to be the broad differences of opinion between the opposing parties.

I may be wrong, and I hardly suppose that our opponents will accept my view of what is necessary to make their position a sound one; but it seems to me that they cannot support their objections without first making good two propositions. The first of these is that, when a man has made a contract with another man, he is entitled to call upon the supreme forces of society to step in and enforce his contract in every jot and tittle, and that without allowing to society any moderating influence over the contract, unless, perhaps, it can be shown to be grounded in fraud. The second proposition is that a contract by A to pay B a hundred rupees is a contract by A to strip himself of every shred of property that he possesses in order to make good that hundred rupees.

Now, both these propositions seem to be exaggerations of principles which, if stated with their due qualifications, most people will be ready to accept. Of the first proposition, I should say that is a most sound and important principle-that people should be held to the substantial performance of their contracts. But I should add that, if the rigid and extreme performance of contracts is found to produce misery and disorder, then society, which is called in to enforce

these contracts, should exercise some moderating influence over them, and that such a duty is the more imperative in proportion to the helplessness of the debtor class. Of the second proposition, I should say that a contract to pay a sum of money seems to me quite a different thing from a contract that the borrower shall strip himself of all the property that he has for the support of himself and his family in order to pay that money. It may be argued that, in order to enforce a contract to pay money, it is the duty of society to step in and strip the borrower naked. But I do not see how it is even arguable that, if such a process takes place, the creditor does not get something outside the terms of his contract. If he does, terms may be reasonably imposed upon him in return, such as are found necessary for the peace and welfare of society.

How far society should step in and insist upon some moderation as the price of its assistance is a question of detail which has to be solved in every age and in every country. But it seems to me that all laws intended for the protection of debtors on terms short of the payment of the whole debt—laws of bankruptcy, laws for the exemption of property from execution—are founded on the view I take of the duties and interests of society.'

"The principle thus laid down by Sir Arthur Hobhouse is, I think, the basis of our proposed legislation now. Those 'duties and interests of society' of which Sir Arthur Hobhouse spoke require most urgently that we should interfere in the districts of the Dekkhan between creditors and debtors. We shall hurt no honest, honourable and reasonable creditors; and, if this legislation and other measures of relief should be successful and happier times should come round, I for my part shall not think it a matter of regret if the dishonest and rapacious money-lender finds no means to recover his ill-gotten gains, and if, after all the claims of justice to all parties have been met, he is left to lament, like Sganarelle,—

"tout le monde est content; il n'y a que moi seul de malheureux. Mes gages, mes gages, mes gages!'

"There is only one other point to which I wish to refer. I entirely agree with my hon'ble friends the Lieutenant-Governor and Mr. Thompson with regard to the extreme importance of sparing no administrative efforts to improve the revenue system in such a way that the pressure of the Government demand upon the land may be lightened. This problem has to be solved not only in Bombay but throughout nearly the whole of India.

"There can be no doubt that the demand of the Government is almost everywhere moderate. Mr. Hope has assured us that in the districts of the Dekkhan in particular there can be no doubt of its moderation.

"In other parts of India with which I myself am acquainted, I know that the same is true, and that our revenue demand is far lighter than that ever imposed by any Native ruler. Nevertheless, it is equally true that this demand upon the land falls not infrequently in bad seasons with extreme severity.

It is not that the assessment is too heavy, but that the procedure under which it is levied is too rigid. I cannot doubt that means will be found—although they unfortunately have not been found up to the present time—to combine complete and proper security for the recovery of the Government demand upon the land with some greater leniency to the peasant-proprietors, who, from no fault of their own, but from misfortune of season, cannot meet their engagements to the State. Bombay has now for its Governor a great administrator: if he can initiate measures in the direction to which I have now been referring, he will do a greater service to the country than any which this Council can accomplish by this Bill."

The Hon'ble MR. HOPE said:—"I am glad to find that the main principles of the Bill, which have, as I was already aware, the approval of the Executive Government, are also, I think I may venture to say, accepted by this Council, and that my task is confined to replying upon what are, by comparison, matters of detail.

"In the first place, it was suggested by the Hon'ble the Law Member that chapter XX of the Civil Procedure Code, as amended in the Bill presented yesterday, would meet all the wants of our Dekkhan districts in respect of insolvency. But I must altogether demur to accepting it as sufficient or suitable for that purpose. The objections to the law, even when amended by the Bill, which I stated yesterday need not be repeated; but I may add to them that the provision for granting a discharge when an insolvent has paid one-third of the scheduled debts, which has been imported from the Presidency Insolvency Act, seems to me false in principle, and likely to work unreasonably in practice, sometimes giving the creditor less than might be recovered for him, and sometimes pressing harshly on the debtor. It has, moreover, been discarded from bankruptcy legislation in England. I admit that by the Bill in question an advance has been made; but an advance somewhat haphazard, tentative and restricted by the difficulty as to insufficiency of Courts, &c., which, as I said yesterday, has hitherto prevented this Council from going even so far as is now ventured on. Finally, one thing which that amended chapter does *not* do is, singularly enough, the very thing which has been represented in the official correspondence, and is indicated in the Secretary of State's despatch, as urgently required—namely, the allowing a debtor to apply for declaration of insolvency, though no process has issued against him.

"Another remark of the Hon'ble Law Member was that it would be sufficient, as to jurisdiction of the Courts, if small-cause-court powers were conferred on all of them. But it seems to me that the only course open to us consistent with common sense is that the Courts should have power to deal

with all the sorts of cases in which raiyats are ordinarily involved. That such cases must very frequently comprise mortgages is clear from the fact ascertained by the Commission, as I said yesterday, that in the villages in Puna tested by them two-thirds of the indebted raiyats' land was mortgaged. To provide Courts professing to deal with raiyats' difficulties but unable to touch, perhaps, one-half of the cases in which raiyats are concerned would be a half-measure, from which no good results could be expected.

"The next question raised is that of appeals, for which the Hon'ble Law Member considers the revision provided for by the Bill an inadequate substitute. Here I may point out that the Bill goes farther in caution than even the suggestions of the Secretary of State. His Lordship says, in the quotation which I read yesterday: 'I am inclined to think that summary jurisdiction without appeal might be conferred experimentally on all Civil Judges in the Dekkhan with great benefit.' But the Bill provides the safeguard of a thorough supervision. It is a misapprehension to suppose, as I understood the Hon'ble Mr. Cockerell to do, that the supervising agency will be a special one. It will be merely a strengthening of the regular staff for the purpose of thoroughly carrying out section 9 of the Bombay Civil Courts Act (XIV of 1869), which runs thus:—

'The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions,' &c.

"The officers appointed will be members of the regular judicial department subordinate to the High Court: they will work the law subject to its general control: the Local Government will have no special jurisdiction over them, and will be unable to make them, as the Hon'ble Member apprehends, a machine for carrying out the policy of the day.

"As to the merits of allowing appeals, compared with a system of revision, I would point out that by the former from three to four per cent. of the cases tried are brought before the Courts, while by the latter the proportion is probably not less than from fifty to sixty per cent. Moreover, the cases which come up in appeal are often not those which deserve to come. Many a man who has a good case cannot afford to appeal: many a man with money needlessly drags his opponent through all the appellate Courts. As an illustration of the persistency of monied litigants, I may mention that I have heard that Sir Barnes Peacock, with reference to the petty appeals, about Rs. 5 sometimes, by which the High Court was troubled, remarked that it would be more economical for Government to pay the amount of the appeals than to keep up Judges and establishments to hear them. Again, the Hon'ble Law Member

has said, as an objection to revision, that the record called for will be inaccurate, incomplete and in the vernacular. As to inaccuracy and incompleteness, the objection, if good at all, applies just as much to appeals as to revision. As to the third point, I feel it my duty to repudiate, on behalf of the Bombay Civil Service, of which I have the honour to be a member, the suggestion that they are unable to deal with cases in the vernacular. Again, the Subordinate Judges will not be inexperienced, as the Hon'ble Member supposes. It is true that twelve new men will be appointed; but they will be added, as stated in the official letter from Bombay, to the list of Subordinate Judges for the whole Presidency: and I cannot doubt that the Executive Government will place men of experience, drawn from other districts, in charge of the newly-opened Courts.

"In favour of the retention of appeals, much stress has been laid on the mortgage-cases, which are said to be intricate, involving difficult questions of account. But this is a misapprehension. Mortgage-cases in which raiyats are concerned are not necessarily intricate, and do not involve more accounts than simple money-cases. This can easily be seen by reference to the actual cases of raiyats, of which a large number are given in full detail in the Appendices to the Commission's Report. If a raiyat owes money, there is an account of it—possibly long and intricate; but it is no more so when he happens to have pledged his land as security for the debt than when he has not. Mortgage-cases are usually only difficult if they happen to involve questions of priorities and the like, or there are several creditors."

The Hon'ble SIR ALEXANDER ARBUTHNOT enquired whether there might not be questions of title.

The Hon'ble MR. HOPE replied:—"Under the Bombay revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner; and so questions of title are not likely to give trouble.

"I may mention to the Council," the Hon'ble MR. HOPE continued, "that, as regards this question of appeals, contrasted with revision, I happen to have had a very considerable experience—if not actually in civil cases, still in criminal ones, which for this purpose come to the same thing. I was once for a long time Magistrate and Collector of a district so large that appeals lay to me from the decisions of twenty-nine Subordinate Magistrates; and the cases they tried, which came up to me, and of which it was my duty regularly to examine a large proportion, sometimes reached five hundred in the month. My experience was that all the serious abuses and irregularities came to light in the examination and revision: scarcely anything ever came out in appeal. After all,

however, the would-be appellant is deprived of nothing by the proposed substitution of inspection and revision; for he can draw attention to his case by petition, and practically get it dealt with just as he can now. If, as the Hon'ble Law Member says, appellate Courts are less harsh than the Courts of first instance, there is nothing to prevent the revising Judge from showing leniency too: if appellate Courts often confirm decisions on mere perusal of the record, his inspection may have the same effect.

"The Hon'ble Law Member has next expressed his fears that section 46, about agreements before Conciliators, and also the registration-provisions, may be defeated by collusion and fraud. As to agreements, of which he seems to think their having the force of a decree the objectionable feature, I would point out that the case is analogous to that of awards filed under section 525 of the Civil Procedure Code, which have the force of a decree too. The objections, if there be any, to the one must apply equally to the other. As to both the agreements and the registration, I would repeat my observation of yesterday, that the same objection as to being open to fraud may be made to many other good laws. The Registration Act may, as the Hon'ble Sayyad Ahmad has said, be easily defeated by one party to a deed returning to the other at home the consideration which they have paid and received before the registrar. The Stamp-laws are constantly evaded by the re-use of spoiled stamps, &c., and the Coinage-laws do not prevent the circulation of false money. Yet we do not think it necessary on this account to abolish registration, stamps and our coinage. The Bill will help those who help themselves: if any persons prefer collusive evasion of it, they will suffer accordingly, and rightly so.

"I will now notice the objections of the Hon'ble Law Member and Mr. Cockerell to certain details of the Insolvency chapter. First, as to the power given to the Court to admit as an insolvent a person found to be so, and to give him a discharge, both Hon'ble Members seem to me to be, if I may say so in all courtesy, still under that confusion of ideas between the fact of insolvency and the conduct of the insolvent which I referred to in my speech of yesterday. If a man is really insolvent, it is perfectly futile to call him anything else. If a man cannot pay more than one anna—to take the Hon'ble Law Member's illustration,—the Court may *now*, under section 358 of the Code, let him off the whole balance, so that the Bill makes no change of principle whatever. Secondly, it is complained that section 20 is retrospective. But so is the present law; and so will be the new Civil Procedure Bill, which I hope we shall pass at our next sitting. If a man, the day after that Bill is passed, applies and is declared an insolvent, all the old decrees against him may be wiped out when he has paid only one-third of their amount, and after twelve years, whether he has paid even that much or not. Thirdly, as to

imprisonment and the Hon'ble Mr. Cockerell's objections to the reduction, by section 35 of the Bill, of the power of Subordinate Judges under section 359 of the Code to imprison debtors up to one year for fraud. I have as great a hatred of 'proved rascality' as any one else. But I consider the power given by the Code a most arbitrary and oppressive one. So far from the rascality being really 'proved,' the Judge is practically allowed simply to say, at the end of the proceedings—'I think the insolvent's conduct very disreputable: he is no doubt a rascal'; and thereupon, without any specific charge, or hearing him in his defence, or even recording a judgment, to send him off to jail for a twelvemonth. In the Bill this power is, in the case of Subordinate Judges, reduced nearer to what officers of their rank and emoluments would exercise if they were Magistrates. It is essential to note, however, that the Court has always the alternative, under section 359, of sending the insolvent to a Magistrate. Before him, and not in any Civil Court, all serious rascality ought to be dealt with; and I hope it will be.

"To section 30, exception has been taken by the Hon'ble Sayyad Ahmad, Mr. Cockerell and the Law Member. The latter, after expressing his objections, concluded with some warmth by affirming his belief that I was the 'sole author' of the section, and giving as his reason for this belief that he 'did not remember anything about it in the Bombay letter.' If he attributes to me everything which is not mentioned in that letter, I presume that, by parity of reasoning, he acquits me of responsibility for everything he does not like which is, and I feel grateful for the relief accordingly. I must, however, protest against any such attempt to individualise the authorship of any particular parts of the Bill. The Hon'ble Member is well aware that the measure now before us is no private Bill; that it emanated from the Bombay Government; that, after modifications thought suitable, it is presented to this Council by the order, sanction and authority of the Government of India, and that I am officially charged with the duty of doing justice to it, irrespective of my personal convictions. I think the Hon'ble Member would have shown more generosity if he had abstained from the remark he has made, and if he had evinced some sympathy for, and desire to render less onerous, the difficult and delicate task I have to perform, instead of endeavouring to fix on me personally the odium of what he seems to consider one of the most obnoxious features of the Bill.

"Turning from this personal question—on which I entered with reluctance, and only from a sense of what was due to myself and to the Government—to the subject-matter of section 30, I find that making over moveable property at a valuation to a creditor is considered unfair; and the Hon'ble Mr. Cockerell has enforced his objections by an illustration about a pig. Now it so happens that

this provision is a very old and well-established one in English law, in execution of writs of *elegit*, which is thus described in a well-known text-book :—

'The sheriff is bound upon receipt of the *elegit* to empannel a jury, who are to enquire of all the goods and chattels of the debtor and appraise the same, and also to enquire as to his lands and tenements and their value. After inquisition had, the sheriff delivers to the execution-creditor all the goods and chattels of the debtor (except his oxen and beasts of the plough) at the value set upon them by the jury: if they be insufficient, he delivers also execution of the lands, and he then returns the writ,' &c.

"Between this English law and our Bill, however, there is this essential difference, that, whereas by the latter it is optional with the Court to use the power regarding any particular articles of property, or not at all, by the latter the action of the sheriff is unavoidable and compulsory. Whenever the Hon'ble Law Member returns, as in due time I hope he will, in health and honour to his native land, he will be liable, in the event of his having to resort to legal proceedings to recover money due to him, to have forced on him, at a valuation fixed by a jury, his debtor's goods and chattels—pig and all!

"With regard to the Hon'ble Sir Alexander Arbuthnot's remarks, I am glad to thank him for the kindly expressions of appreciation which fell from him, and to add my satisfaction that he found in my speech nothing to comment on more serious than what seemed to him the one-sidedness of my description of the money-lender. But I have every confidence that, when he is able to study my remarks in print at leisure, he will agree that I have done the money-lender full justice. It is no doubt difficult to catch the general scope, or even the exact words, of a long and rapidly-spoken address. Thus, the phrase 'usurious money-lender' which he ascribes to me I believe I did not employ. As to extravagant profits, I have nowhere attributed them to money-lenders. On the contrary, the very passage which he has read from paragraph 85 of the Commission's Report was the germ of my remark, that in the land money-lenders acquired 'what yields them at best a precarious profit, not exceeding that which reasonable rates of interest, combined with easy recovery, would produce, but wrung forth with trouble, anxiety, expense, popular execration, and even personal danger.' Nor did I say that in India fraud by the creditor was 'the only thing' to be guarded against. I said it had 'almost solely' to be so. Speaking, as I did, in broad terms and of the Mufassal, what I said seems correct; and it is borne out by a recent remark of the Hon'ble Sir Charles Turner's, that even in the town of Madras the bulk of insolvents were not traders, but part of the general population. So far from keeping frauds by debtors in the background, however, I enumerated them specially, and explained the provisions of chapters VIII and IX for counteracting them. Finally, nothing could be more complete than the terms in which I have acknowledged the usefulness and necessity of the saukár, and the propriety of giving him all fair

help. In this respect the Hon'ble Sir John Strachey has done me no less than justice; and I have, as I said, every confidence that the Hon'ble Sir Alexander Arbuthnot will eventually do the same. These remarks will, perhaps, be a sufficient reply to what the Hon'ble Mr. Rivers Thompson said on the same subject.

"In conclusion, I have only a few words to add on what fell from His Honour the Lieutenant-Governor of the Panjáb. I fully recognize, as he does, the gravity of the subject, and the possibility of this Bill being followed by similar legislation, or demands for it, in respect of other parts of India. But the circumstances of the different provinces of India are so diverse that I hold, and have held in other cases before this Council, that they need separate treatment. This Bill will, therefore, furnish to them, at most, an analogy and not a precedent. It is expressly a local Bill, and has been so deliberately made so, that a power of extension to other parts of the Bombay Presidency, which was in the draft, has been cut out. The subject of the other remedies of executive application has, as the Hon'ble Sir Alexander Arbuthnot has shown, been brought to the notice of the Executive Government. What I would therefore earnestly deprecate is, first, any hampering of the progress of the Bill by consideration of other parts of India; secondly, any delay of it while executive remedies, which are a separate affair, are being matured; and lastly, any serious mutilation of it by the Select Committee or the Council. It should be remembered that the Bill is essentially local in character, and the outcome of careful consideration by those who are best acquainted with local circumstances, and the best judges of popular feeling and the probable result of what they recommend. The Bill has only come to this Council by accident, so to speak, through the local legislature not having power to pass such parts of it as affect the Civil Procedure Code. It should therefore be taken as a whole. Its main principles are already accepted by the Executive Government and, I think I may add, by this Council. If it be altered, cut down and emasculated in detail, it will end in *fiasco*, for which there will be no satisfaction to the Local Government in the reflection that it is not responsible."

His Excellency THE PRESIDENT said:—"I do not think it consistent with the importance I personally attach, and which, I may add, the Government collectively attaches, to the subject of the motion now before us that my own vote upon this motion should be an altogether silent one. But the Bill introduced yesterday by the Hon'ble Mr. Hope has already been the subject of such prolonged and exhaustive comment, and also of such copious explanation by the Hon'ble Member himself, that I think I can promise that my own remarks upon it will not be very lengthy. I am the better able to make this promise because, in the observations made at the commencement of the discussion this morning by my hon'ble colleague Mr. Rivers

Thompson, and at the close of the discussion yesterday by my hon'ble colleague Sir Alexander Arbuthnot, those Hon'ble Members largely anticipated what I should otherwise have wished to say myself on behalf of the Government as regards the various points to which they alluded. I think, however, that I gathered from the remarks of my hon'ble colleague Sir Alexander Arbuthnot that some words which had previously fallen from my hon'ble colleague Mr. Stokes had conveyed to his mind (and possibly, therefore, they may have conveyed it to the minds of other Hon'ble Members) an impression that the Member of this Government who is specially concerned in the conduct of its Legislative business had characterised the vote he was about to give as a vote given in more or less reluctant compliance with instructions from the Secretary of State to the support of a measure which he generally deprecated. Now, I am bound to say that this was not the impression conveyed to my own mind by the remarks of my hon'ble colleague on the left (Mr. Stokes). I was listening, as I always do listen, with great attention and interest to his remarks; and the impression they conveyed to my mind was essentially different from that which appeared reflected in the remarks of my hon'ble colleague on the right (Sir Alexander Arbuthnot). Had it been otherwise, I should not have failed to interrupt my hon'ble friend Mr. Stokes in order to afford him that opportunity of which he is now deprived by our rules of clearing his language from a construction entirely inconsistent with his position as a Member of this Government. But, whilst I am persuaded that the remarks of my hon'ble colleague were not quite accurately caught on this side of the table, I am grateful to my hon'ble friend Sir Alexander Arbuthnot for having promptly repudiated on behalf of the Government a position which I feel sure no Member of it would be less willing to accept than my hon'ble friend Mr. Stokes. What I understood that Hon'ble Member to say, and what I believe he really did say (he will correct me if I misrepresent him), was simply this. He said that, whilst approving the purpose, and supporting the essential principles, of this measure, he found in it, as at present drafted, certain provisions which he could not reconcile himself to acquiesce in—*firstly*, because he regarded those provisions as unconstitutional; and *secondly*, because he did not regard them as in any wise essential to the recognized purpose of the Bill. And then, in support of the view thus expressed by him, he went on to point out that those provisions had not been suggested, or even considered, by the Secretary of State, in concert with whom the essential principles of the Bill had been laid down by the Government of India. Well, whatever view be taken of those particular provisions,—and on such a subject the opinion of my hon'ble friend carries a weight of a legal authority which is entitled to the greatest respect—I must venture to say that the statement thus made by him appears to me perfectly consist-

ent with the position and sentiments of the Government of India in reference to this measure, to which we, one and all of us, attach the greatest importance, and which we, one and all of us, are most earnestly desirous to carry into law without any avoidable delay. But it is precisely for this very reason—that is to say, because the measure now before us is a measure in which the Government is earnestly interested; a measure in which our responsibility is largely concerned, and because, moreover, it is necessarily, and properly, of a more or less experimental and tentative character—that it seems to me undesirable, even if it were practically possible, that on the part of its warmest well-wishers there should be at the present stage of it complete unanimity of opinion upon every one of its seventy-seven clauses. For my own part, I am persuaded that nothing but great advantage can accrue from the fullest consideration of all points in connection with any portion of this Bill upon which differences of opinion have been entertained or expressed; and I sincerely trust they will receive such consideration from the local and legal authorities, as well as from the Select Committee to which the Bill is about to be referred. The Government of India has not committed, in an equal degree, to every single detail of every single clause of this elaborate measure the maintenance of those important principles which we regard as absolutely essential to its efficiency. But on those principles the mind of the Government is unanimous, and we are fully resolved to maintain and enforce them.

"I should like for a moment to refer to the genesis—if I may so call it—of this measure. As pointed out just now by my hon'ble colleague Sir John Strachey, the distressed condition of the peasantry in many parts of the Dekkhan is a matter which has been long—perhaps too long—under the anxious consideration of the Government of India. It has been the subject of profuse correspondence and protracted inquiry; and from all that correspondence and inquiry we were at length led to one very clear, definite and settled conclusion. That conclusion was that the case we have to deal with here is a special case, absolutely requiring special legislation. In that conclusion we have had the concurrence, support and approval of the Secretary of State; and, having come to that conclusion, and at the same time most fully recognising all the risks inseparable from special legislation of this kind, we deemed that our best security for the preparation of a thoroughly practical measure would be to obtain as speedily as possible the fullest available special knowledge and local experience on the subject of it. Well, it was with this object, and in this belief, that the Hon'ble Mr. Hope, who had given to this question long and special study, was deputed by the Government of India to proceed to Bombay, and there, in concert with the Bombay Government, and in personal conference with the Governor, whom my hon'ble colleague has justly

called a most able and experienced administrator, to frame the measure which, at our request, he yesterday laid before this Council. Of course the measure thus framed naturally contains various clauses which have not been devised by the Government of India, and on which I do not think the Government of India is at present in a position to express any decisive opinion. Our position in regard to all these clauses is a very obvious one. We deem it due to the Local Government, which is so especially and directly interested in the effects of this measure, and due also to its experienced coadjutor in preparing the measure, that no clause devised by them, whatever opinion may at present be entertained in regard to it, shall be altered or withdrawn, disturbed or modified, without the amplest and most searching examination during those preparatory stages through which the Bill has still to pass. But the Bill, as it now stands in its present form, satisfactorily embodies certain great principles on which the opinion of the Government is unanimous—principles which we believe to be essential to the efficiency of the measure. Those principles it is our intention to uphold intact; and on those principles the Government of India is not prepared to entertain any compromise at any stage of the Bill. The principles I refer to have been practically indicated in the course of our discussions, and they may, I think, be briefly enumerated under seven main heads. There is, in the *first* place, that power which was referred to yesterday—the power to go behind the bond; *secondly*, the necessity for simplifying the procedure; *thirdly*, the augmentation of the number of tribunals; *fourthly*, village registration, to which we attach great importance; *fifthly*, the establishment of Courts of Conciliation; *sixthly*, the extension of the period of limitation, and *seventhly*, the abolition of imprisonment for debt.

"All these principles are principles on which the Government of India has, after lengthened deliberation, come to a definite and final conclusion; and I certainly think that the Hon'ble Member who introduced this Bill was fully entitled to observe, as he did, that the general suitableness of the Bill is amply guaranteed by the lengthened deliberation with which it has been brought on to maturity. For my own part, I am of opinion that this measure has not come before us a day too soon; and I entirely agree with the Hon'ble Mr. Hope in thinking that, for the reasons stated by him, the passage of this measure into law at the earliest possible moment is a matter of supreme importance.

"The Hon'ble Member reminded us that it now rests with this Council to redeem the pledges given four years ago for the redress of grievances which have been thoroughly investigated and amply proved—grievances which are, indeed, too notorious to be disputed. But I think he might have gone even

further, and taken deserved credit to himself for the fact that the measure now before the Council really represents the first serious effort to deal practically and directly with the deplorable state of things urged on the attention of the Legislature no less than twenty years ago by the Local Government. In 1858, Lord Elphinstone, who was then Governor of Bombay, passed in Council a Resolution which is very brief, and which, with the permission of the Council, I should like to read. It is as follows:—

'His Lordship in Council entertains no doubt of the fact that the labouring classes of the Native community suffer enormous injustice from the want of protection by law from the extortionate practices of money-lenders. He believes that our Civil Courts have become hateful to the masses of our Indian subjects from being made the instruments of the almost incredible rapacity of usurious capitalists. Nothing can be more calculated to give rise to wide-spread discontent and disaffection to the British Government than the practical working of the present law. The attention of the Legislative Council on the subject should be requested, and copy of the Revenue Commissioner's letter forwarded for their consideration.'

"I think there can be no doubt that the state of things that Resolution describes has since then gone on growing from bad to worse; and, so far as I am aware, up to the present moment there has really been no practical effort made to deal directly with it. The Code of Civil Procedure has been completed; the Usury Law has been revoked; but these measures have not been taken with special reference to the condition of the rural population in the Dekkhan: and I do not think it can be asserted by anybody that the condition of the peasantry of that part of India has been appreciably affected by those measures. For my own part, I must say that I regret that the effort now being made has been so long deferred. I regret the circumstances in which this measure has been introduced. I do so because I cannot but fear that in those circumstances there is much that may not impossibly expose the motives of the Government in the eyes of ill-disposed or superficial observers to misconstruction. That part of India for which we are now legislating has again been afflicted with social disturbances. I think it not improbable that many persons will be disposed to attribute the source of those disturbances to the still unremedied condition of the indebted raiyat. As a matter of fact, that supposition would be erroneous. There is no evidence in support of it; and there is much evidence to the contrary which points to a very different cause of these troubles. I have lately received several communications from the Government of Bombay on the recent disturbances and dákáities in the Dekkhan; and this is what His Excellency writes:—

'There is no sign of agrarian connexion in this case—that is, the land-holding community had nothing to do with it. This disposes of the idea that indebtedness of raiyats is at the bottom of the matter.'

"I have no doubt that Sir Richard Temple, who is in the best position to do so, has arrived at a sound conclusion on that point. But I would ask the Council—is it not obvious that—if in any part of India the actual cultivators of the soil see not only the proceeds of their labour, but actually their personal freedom, passing from them into the hands of a class whom, rightly or wrongly, they regard as the authors of their ruin, and under the operation of laws which, rightly or wrongly, they regard as the engines of it—the bitterness of sentiment, the sense of hopelessness and irremediable wrong, engendered by such a state of things must be a chronic incentive, if not to social disturbances of this kind, at least to personal crime? Allusion has been frequently made in the course of this discussion to the report of the Dekkhan Riots Commission; and that report abounds in evidence that this is actually the case. I select a single instance furnished by the First Assistant Collector of Ahmadnagar. He writes:—

'Another sad case occurred at Visapur, taluka Tasgaon. One Appa Rowji owed money on a bond to Hirachund Guzur. Hirachund threatened to sell him up, but promised not to do so if Appa Rowji would get one Appa Malli to go bail for him. Appa Malli was accordingly induced to befriend Appa Rowji, and passed a bond for Rs. 200 to the Guzur, giving as security for payment his house and land. The agreement was that Appa Rowji should at the same time give to Appa Malli a bond of Rs. 400, with his land as security. Other money was owing by Appa Rowji to Appa Malli, which made the whole amount up to Rs. 400. This bond, however, was never forthcoming. Time after time Appa Malli was put off. Meanwhile, the Guzur lost no time in enforcing the bond for Rs. 200 which Appa Malli had so weakly executed. His house and lands were seized after all due proceedings in the Civil Court; and, to add insult to injury, the latter were given to Appa Rowji to cultivate. Accordingly, Appa Malli, despairing of obtaining redress by the ordinary course of law against his more crafty opponent, waylaid Hirachund Guzur and murdered him in open daylight, and in the presence of several witnesses. He confessed everything, and courted the fullest inquiry into his money transactions. Appa Malli has been hanged as a matter of course. Such executions, however, would appear to have little effect in deterring others placed in similar circumstances from committing similar crimes. Nor, on the other hand, do the Guzurs appear to grow a whit less grasping through fear of meeting a violent death at the hands of maddened debtors. The motive in all these cases is the same; and in all these appears an utter recklessness which is deplorable in the extreme. Careless and untutored, the ryots learn by bitter experience that they have little chance of obtaining redress in the Civil Courts against the more cunning sowcars. Brooding over their wrongs, real or fancied, makes them desperate; and in an evil hour, without fear for the present or hope for the future, they turn upon their oppressors. It is certainly the case that in our Courts, as at present constituted, the poor and ignorant have no chance against the wealthy and clever.'

"I do not wish to multiply illustrations of this kind, which might be very easily done; nor do I desire to dwell on this particular one. Nothing could be further from my own wishes, or more contrary to my own views, than to lend countenance to a popular cry, which in so far as it is general I believe to

be unjust, against that much-abused, but most important and useful, class of middle-men on whose co-operation the agricultural industry of this country is entirely dependent. I should be very sorry if anything said in the course of this discussion appeared to give on the part of the Government countenance to such a cry. I do not, of course, suppose for a moment that the saukár and the baniyá are, as a class, invariably animated by the highest moral sentiments; but I do not believe that, in the exercise of their calling, they show a greater indifference to honesty than any other class exposed to similar temptations and difficulties. My hon'ble colleague truly pointed out yesterday that there is ample evidence in the report of this commission that the source of their profits are extremely precarious as well as unpopular. Nor is there any evidence that those profits, as a rule, are unfair. The creditor is, no less than the debtor, entitled to the protection of the law in the maintenance of his honest interests; and any legislation unduly directed against the small capitalist to the unfair advantage of the debtor might very possibly paralyse the whole agricultural industry of this country by shaking to its foundation the system of credit upon which its operations are conducted. But, in saying this, I think it obvious that what is good for the honest debtor is also good for the honest creditor. It cannot be to the interests of the saukár that the raiyat, who is his partner in the operations of agricultural industry, should be systematically pauperised and embittered against him. It cannot be for the interest of the community itself that the relations between these two classes should be such as to provoke feelings of animosity, often breaking out into crime, upon either one side or the other; and I think it cannot be doubted that, in that part of the Dekkhan for which we are now legislating, the relations between the saukár and the raiyat have been brought by a variety of causes into a condition which no legislator could have ever contemplated, and which must withdraw popular confidence and esteem from any law which artificially tends to perpetuate it. The Hon'ble Member who introduced this Bill referred to Mr. Pedder; and I think no one will dispute that of this state of things there is no more competent observer than Mr. Pedder. Mr. Pedder sketched, not long ago, in the pages of a London periodical a very graphic picture of this state of things drawn from the life; and, so far as I am aware, I do not think the truth of that picture has ever been challenged. But I can say that, in the truth of such a picture, I find the amplest justification for the special and exceptional legislation embodied in this Bill. This is how Mr. Pedder describes the career of a Dekkhan raiyat who has once fallen into debt:—

'The indebted peasant executes a bond, bearing high interest and burdened with onerous conditions. For a couple of years he is not pressed; but when the period of limitation is drawing near, he is told that his payments cover only what he has had in necessaries, and that

the sum borrowed, with interest, is still due. He pays something and executes a fresh bond on still more onerous terms for the balance, with a premium for renewal. Then he pays all he can; yet, at the end of the next period of limitation, finds that the debt has increased. Perhaps the process of execution of fresh bonds is repeated again and again; but at last the saukár deems it desirable to bring a suit. In nine cases out of ten it is decided *ex parte*, because the people say it is useless to appear in Court unless they can deny execution of the bond sued for, or without the aid of a pleader, whom they have not the means to pay. The creditor then partially executes the decree by sale of the cattle, household utensils and other personal property of the debtor, and holds over him the threat of imprisonment in satisfaction of the balance. Even female honour is sometimes the price of forbearance. * * * * * Thenceforward, lending the peasant on exorbitant terms the seed and cattle absolutely necessary for cultivation, he takes all the produce of the land, except the barest subsistence of the nominal owner and his family. * * * * But sometimes the creditor sells the land of the debtor in execution, and usually buys it in at a price very far below its value, leaving the balance of the decree unsatisfied, since no peasant dares to bid against a powerful saukár, and it would be thought unbusiness-like in another saukár to do so. Then the best that can happen to the unfortunate yeoman is to remain as a tenant-at-will at an exorbitant rack-rent on the land he once owned. * * * * * If the creditor does not allow this, the peasant flies the country, and tries to begin life again in some distant locality. * * * * * Even there, unless he takes refuge in foreign territory, the arm of the law reaches the judgment-debtor as soon as he has got together a little property. * * * * As soon as the colonists, who are assisted with advances by Government, have acquired any property, it is seized in execution of decrees for old debts. * * * * There is, however, a depth lower than penury or exile. Sometimes the wretched debtor executes an agreement which almost avowedly makes him the bond-slave of his creditor.'

"Well, then, that is the state of things for the remedy of which this Bill has been introduced. My hon'ble friend the Lieutenant-Governor pointed out to us yesterday what I am afraid is only too true, that this state of things exists, not indeed in the same degree of intensity, yet more or less potentially as it were, throughout the greater part of India, where a comparatively slight aggravation of existing circumstances might not impossibly produce results scarcely less distressing than those which it is our present object to mitigate in some parts of the Dekkhan. In view of this fact, His Honour observed that the condition of the Indian peasant could only be partially improved by the measure we are now taking for his protection from the exorbitance of claims upon the part of the money-lender, unless we simultaneously relieve him from the unvarying pressure of claims on the part of the State itself, by relaxing the rigidity of our land-revenue system. Well, I do not feel in a position to enter into that question, which is a very large and very important one. I may say at once that the Government is certainly not indifferent to any of the considerations which suggested the remarks of my hon'ble friend. It was mentioned yesterday by my hon'ble colleague Sir Alexander Arbuthnot that this question has been urged by us

on the attention of the Government of Bombay in special reference to those districts of the Dekkhan for which we are now legislating, and that it has engaged our own attention in reference to other parts of India. I may add that this question, in all its aspects and bearings, was some time ago commended by the Government of India to the special attention of the Famine Commission, from whose report I anticipate much practical aid in the further consideration of it. The indifference of the Government to this aspect of the question must not, therefore, be assumed from the absence of all allusion to it in the terms of the present measure. I am personally disposed to believe that the rigidity of our present land system might, in various directions, be relaxed with great benefit to the cultivator, unaccompanied by any serious inconvenience to the State. But, were I now to indicate my own views on this important question, I feel that any expression of them would be necessarily crude and premature, inviting discussion on a subject which is not at present under the consideration of this Council. All that I am concerned to point out is that alterations in the *modus operandi* of our land-revenue system, whether as regards the collection or assessment of revenue, can be effected without legislation; and that, therefore, the provisions of the Bill now before us are properly confined to those remedial measures which absolutely require not only legislation, but legislation of a special and somewhat novel character. The Bill in this respect embodies certain definite conclusions at which the Government has arrived, and represents our settled determination to carry those conclusions into effect. It is essentially a local Bill and a Bill of a tentative character. If the measure works well, it may be cautiously extended. If it works badly, it can be promptly modified; and, as regards those minor features of it on which differences of opinion still exist and will doubtless continue to exist, I do not think they can be satisfactorily removed or reconciled by any other authority less conclusive than that of experience. It is for this reason that I sincerely hope the measure now before us may be passed into law before the close of the present year."

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that the Bill be published in the *Bombay Government Gazette*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th July, 1879.

SIMLA;
The 18*th July*, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 320a, L. D.—26-7-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 24th July, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir J. Strachey, G.C.S.I.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Reports of the Select Committee on the Bill to amend the Code of Civil Procedure be taken into consideration. He said that in March 1877, on the occasion of passing the Code of Civil Procedure, His Excellency the President had averred, with perfect accuracy, that it might indeed be said that the whole legislative and administrative machinery of India had, for a lengthened period, been at work upon the Bill then before the Council. It might now be averred, with equal accuracy, that for nearly two years the whole of this machinery had again been at work, criticising with the utmost minuteness and freedom the result of its former labours. The Bill which MR. STOKES would ask the Council to pass to-day embodied the bulk of this criticism. The report which he now asked the Council to consider, together with the two preliminary reports which had already been presented and published, described in great detail the additions which the Select Committee had made to the Bill. Following the precedent of what was done in the case of the Railway Act, they proposed that this final report should be published in the Gazette along with the Bill when passed, and this course would relieve him from the necessity of troubling the Council with a mass of

technical details which no ingenuity could render interesting to unprofessional persons. There were, however, two or three changes of substance on which it seemed desirable to say a few words.

The first was the amendment of section 13, which dealt with *res judicata.* The object of that section was to lay down the rule that the Courts may not try any suit in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit before a Court of competent jurisdiction, was heard and finally decided therein. The former judgment was not conclusive, to use the language of De Grey C. J., in the Duchess of Kingston's case, as to any matter "which came collaterally in question," or as to any matter "incidentally cognizable," or as to any matter "to be inferred by argument from the judgment." The first paragraph of section 13 of Act X of 1877 was intended to express this doctrine; but it was not very accurately worded, the words "directly and substantially in issue" not being clearly referrible to the former suit as well as the latter. The amendment made by the Bill would, he trusted, preclude the difficulty sometimes felt in cases like the following, which had actually occurred under the former Code. A sues B in a Court of Small Causes to recover damages for the wrongful cutting down and removal of some mango trees, which grew on land claimed by A. B denies that A has any right to the land or the trees. The Court may try the question as to A's title to the land as an incidental question, the decision of which is necessary to the adjudication on the claim for damages. But the judgment on this point would not be conclusive, except so far as regards the right to the damages claimed (Sutherland S. C. C. Rep. 51). Again, A sues B in a Munsif's Court to recover damages for the taking away by B of some mango trees growing on land to which A set up a title. A's title is tried incidentally in the suit and decided in his favour. B subsequently sues A for a declaration of right to the land. The decision in the former suit is no bar to B's claim (1 Beng. L. R. A. C. 4). We had struck out the explanation which we proposed to add to this section, since it would not, apparently, have suited any part of British India but the Lower Provinces. There the local legislature would be able, if it thought fit, to declare that a Court trying a suit under a rent-law should not be deemed by any Court trying a suit under any other law, as regarded the title to the immoveable property in respect of which the suit was brought, a Court of competent jurisdiction within the meaning of this section.

The next point to which MR. STOKES would ask the Council's attention was the extension which the Bill gave to the chapter on Insolvency. The present Code provided an insolvent law for the Mufassal much less rudimentary than that of the former Code, Act VIII of 1859. But (to quote one of Sir

Arthur Hobhouse's instructive speeches) it still fell "short of a complete and full Insolvency law, which we are informed the judicial machinery of the Mufassal is not strong enough to work."

The expediency of extending the law was strongly urged upon us by Major Grant, formerly District Judge of Karáchí, and now Judicial Commissioner of Sindh. Major Grant said:—

"The Insolvency law, as contained in chapter XX of the Code, is of very little practical benefit to any one, and is indeed, I might almost say, a dead-letter. The provisions of chapter XX are, in fact, perhaps less seldom used than the provisions of the old Code, which did duty for an Insolvency law. I think, if enquiry was made, this would be found to be generally the case throughout the Mufassal of India. I have before me the report on the Judicial Administration (Civil) of the Central Provinces for the year 1878. At paragraph 43, page 33, I find it stated that in nine districts the law on the subject of insolvency was never put into use, and that, as regards the remaining districts, out of a total of 68 persons declared insolvents during the year, 52 belonged to Nágpur. There can be no doubt that this very unsatisfactory state of things results from the fact that the law only applies to judgment-debtors who have been arrested or imprisoned in execution of a decree. I would gladly see the law go a great deal further, as proposed in the memorandum submitted with my letter referred to above; but if it is still held that the judicial machinery is not strong enough to work a complete Insolvency law, I think at any rate that some slight extension of the present law might be granted without causing any great increase of work. What I now venture to propose—and I earnestly beg that my proposal be considered—is that the provisions of the existing law, as contained in chapter XX of the Code, be extended to persons *against whose property an order of attachment has issued in execution of a money decree.* This would benefit debtors and creditors alike. It is obvious that it would greatly benefit a debtor to be enabled to become an insolvent before all he possesses has been sold at possibly a ruinous loss, and his creditors would benefit by a rateable distribution of his property while he has some. At present it is a fact, which can be very clearly proved, that, as a rule, those who are under the existing law declared insolvents have no property at all. It has all disappeared by process of attachment and sale before they have had an opportunity of being declared insolvents."

The Committee had accordingly extended chapter XX to persons against whose property orders of attachment had issued in execution of money-decrees. It had been proposed to provide (as was done by the Panjáb Laws Act, 1872, section 23) that any creditor whose debts amounted to a certain sum might apply that the debtor be adjudicated an insolvent. But, as this might obviously lead to harassing applications by persons who were not creditors at all, or who were not creditors for the requisite amount, the Committee decided, instead, to allow any holder of a money-decree to apply. The other changes in this chapter were specified in the report. The most important was that, as soon as the debts due to the scheduled creditors were satisfied to the extent of one-third, the Court was empowered to declare the insolvent free from all liability in respect of such debts. The law in this respect would thus be, as it

ought, identical in the Mufassal and in the Presidency-towns, where the Statute 11 & 12 Vic., c. 21, s. 69, was still in force.

Chapter XX, even with all these improvements, would still be incomplete. But it went as far as most of us, with our present knowledge of the condition of the Mufassal Courts and the extent of Indian indebtedness, thought safe and wise. The Home Department either had issued, or was about to issue, a circular to the Local Governments requesting their opinion as to the propriety of allowing debtors to a certain amount to apply for a declaration of insolvency; and, if this were found feasible, the law would be altered accordingly.

Lastly, MR. STOKES had to mention the extension of the High Courts' revisional jurisdiction which would be effected by the proposed amendment of section 622. The Committee considered that this section should run thus :—

"622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, *or to have acted illegally, or with material irregularity, in the exercise of its jurisdiction*, and may pass such order in the case as the High Court thinks fit."

The change was a serious one and must be understood as made tentatively. It would never do if the new power to call for cases in which the lower Court had acted illegally, or with material irregularity, in the exercise of its jurisdiction were misused so as, practically, to give a second appeal in every case. But the High Court of Bombay at present exercised under Bombay Regulation II of 1827, section 5, the jurisdiction which the amended section would confer on all the High Courts; and both Sir Charles Turner and Mr. Justice Innes were of opinion that the change should be made and might be made safely.

Lastly, as the Code would, if the Bill passed, be amended, more or less, in about 130 of its 652 sections, the Legislative Department would, for the convenience of judicial officers and pleaders, at once issue a revised edition of the Code, embodying all the amendments which the Bill would effect.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

OUDH CIVIL COURTS BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Oudh be taken into consideration. He said that the very few amendments of substance which

had been made by the Select Committee since the Bill was last before the Council had been made on, and entirely in accordance with, the suggestions of the local authorities, and that these alterations of the former Bill were described in sufficient detail in the brief report now under consideration.

He would therefore confine the few remarks which he had to make in regard to the subject of this Bill to an explanation of the reasons which had led the Select Committee to withhold their support from some of the recommendations of the local authorities. The Local Government had strongly pressed the expediency of assimilating the provisions of the law in regard to second appeals, where the judgment of the first Court of appeal was in substantial concurrence with that of the original Court, to the law which was current in all other parts of India. It would, in short, abrogate the finality of concurrent judgments, which was the peculiar feature of the Oudh appellate procedure. The theory of this special procedure seemed to be that, as each Court, whether original or appellate, consisted only of a single Judge, where the judgments of the two first Courts by which any case was tried were substantially at variance in regard to such case, there should be a power of reference, in the form of a second appeal, to a third Court; but that no satisfactory result could be expected from a reference to a third Judge in the converse state of circumstances where the two first Judges who had to do with the case were agreed as to the decision to be pronounced upon it; and this conclusion applied equally whether the question at issue was one of fact or of law. Now, as the effect of this Bill was simply to alter the status of Courts subordinate to the chief Appellate Court and the latter remained on precisely the same footing as before, the plea for the assimilation of the appellate law in Oudh to that of other Provinces in which the Chief Courts of Appeal consisted of two or more Judges had no particular force. It had been further urged that the extraordinary powers of revision exercised heretofore by the Chief Appellate Court in Oudh had acted as a safety-valve to the otherwise dangerous curtailment of the ordinary right of appeal; whereas it was proposed in this Bill to rescind those powers. As a matter of fact, these special appellate provisions, which were, without any qualification as to time, reported to have worked satisfactorily, had been in force in Oudh since 1871; whilst the extraordinary powers of revision were conferred on the chief Appellate Court only in 1876. The Select Committee, however, would probably have been prepared to admit as a general principle that any curtailment of the ordinary right of appeal should be accompanied by the grant to the superior Court of an efficient power of reviewing non-appealable cases, and in that view would have provided in this Bill for the exercise by the Judicial Commissioner of some extraordinary power of revision of concurrent judgments declared to be final; but all necessity for any such special provision had been avoided by the passing into law to-day of the Bill for

amending the Civil Procedure Code, which afforded the utmost desirable protection and relief in this direction.

The local authorities had also desired that the opportunity afforded by the present fresh legislation in regard to the Civil Courts in Oudh should be taken for conferring on the Judicial Commissioner, as the High Court of that province, the powers in regard to matters of divorce and probate which were by Act IV of 1869, and Act XIII of 1875 in conjunction with Act II of 1877, conferred upon the High Courts of most other Provinces. As he had already observed, the status of the Judicial Commissioner's Court was in no way altered by this Bill; it continued to be a Court consisting of a single Judge, and the considerations which operated in withholding the powers conferred by those Acts, at the time that they were enacted, from the Court of the Judicial Commissioner were in full force still.

The Hon'ble Mr. Hope said that he did not propose to offer any objection to the passing of the Bill, or to bring forward any amendment with respect to it. There was, however, one point which it seemed to him desirable should remain on record in connection with the measure. Under the system which would be superseded by this Bill, there was a large number of Courts in Oudh. So far as he had been able to ascertain from the papers which had been kindly furnished to him for perusal by the Home Department, it appeared that formerly there used to be 128 Courts of several grades in Oudh to which the people could resort, and amongst them there were 43 Courts of tahsíldárs, that was to say, officers in charge of the lowest subdivisions of a district. Under the Bill the number of those Courts would be reduced to about 38, and the Courts of the tahsíldárs would be abolished. So far as he had been able to make out from the papers, which were not perhaps very clear, about 18 tahsílís would be left without any Court at all, whereas under the previous system the tahsíldár had a jurisdiction up to Rs. 100, and the people of those tahsílís would now have to resort to some adjoining tahsílí in order to get their cases decided. Besides that, it appeared that the subordinate Judges and munsifs who were now to be appointed, and who corresponded with the assistant commissioners and extra assistant commissioners of the old system, would have two classes of powers instead of one, and that in the present Bill we had reduced the power of the munsifs from Rs. 1,000 as it originally stood to Rs. 500, for a reason which he would not say was a valid one, but which, at any rate, was connected with the remark with which he wished to conclude—namely, that, unless the jurisdiction of the munsifs was cut down, there would be little left for the subordinate Judges above them to do. The effect of this was that people with cases above Rs. 500 would be obliged to go to a subordinate Judge at a distance instead of a munsif, in order that he might have his time sufficiently occupied.

MR. HOPE was well aware that this reorganization had been very carefully considered by the Local Government and by the Government of India in the Home Department, and he was not in a position, ignorant as he was of the local circumstances of Oudh, to offer criticisms on the general policy of the measure; but he wished merely to call the attention of the Council to the fact, which might remain on record, that this seemed to him a move rather in the opposite direction to that in which it was considered desirable to move in the Dekkhan, and rather opposed to the policy lately suggested in the despatch of the Secretary of State, which was well known to the Council, of bringing the Courts near the homes of the people.

The Hon'ble SIR ALEXANDER ARBUTHNOT said that, as the Hon'ble Member who had just spoken had referred to certain facts which had come to his knowledge from papers furnished to him by the Department of which he (SIR ALEXANDER ARBUTHNOT) had charge, it was perhaps desirable that he should say a few words on the subject. He gathered that the Hon'ble Member objected to the reduction which would be made under this Bill in the number of Courts of the lowest grade in Oudh.

The Hon'ble MR. HOPE explained that he did not object. He merely wished to draw attention to the fact of the reduction.

The Hon'ble SIR ALEXANDER ARBUTHNOT continued to say that he gathered, however, that, from the remarks the Hon'ble Member had made, he wished to place on record the fact that he regarded the measure which had been recommended by the Local Government, and supported by the Government of India and by the Select Committee of that Council, as a measure which was inconsistent with the principles of the policy which had been followed in the Bill recently introduced into the Council with reference to the Dekkhan districts; and, as Mr. Hope had had charge of the last-mentioned Bill, he inferred from his present remarks that he greatly preferred the principle of that Bill to the principle of the Bill which had now been introduced into the Council by our hon'ble colleague Mr. Cockerell. He thought that, in the remarks Mr. Hope had made, he had somewhat overlooked the very material difference between the judicial and executive arrangements hitherto subsisting in Oudh, and those hitherto subsisting and now existing in the Bombay Presidency. Oudh, up to the present time, had been administered under what was called the non-regulation system. The judicial and revenue functions had been discharged by the same officers. The tahsíldár had not only performed executive duties, often of a very onerous character, but had been entrusted with judicial duties corresponding with those which were performed by district munsifs in the Regulation Provinces. Under the Bill now before the Council, the Revenue authorities would be entirely divested of their judi-

cial functions; in fact, the motive of the Bill had been to relieve the Revenue authorities of those functions, on the ground that the work in Oudh was so heavy that it was impossible for the same officers to do justice both to their judicial and to their revenue work. Now, he had no more personal experience of Oudh than the Hon'ble Mr. Hope had; but he understood that the districts in Oudh were very small, and he had no doubt that, when the measure now before the Council became law, the territorial jurisdiction of the district munsifs of the Courts which would now be established would not be greater—probably it would be considerably less—than the territorial jurisdiction of the corresponding Courts in the Regulation Provinces of Bengal, Madras and Bombay, while, as in Madras and Bombay, their whole time would be devoted to their judicial work. The two Governments and the Select Committee having come to the conclusion that, on general grounds, it was desirable to separate the two functions—judicial and executive—and to constitute a separate judicial establishment in Oudh, it had become necessary, with reference to the character of the litigation, to entrust to the subordinate Judges suits involving lower amounts than those entrusted to subordinate Judges in other provinces; but the difference of jurisdiction under the present Bill would be so small that he did not think that there was any reason whatever to apprehend that the proposed measure would involve any denial of justice to suitors.

He believed that the circumstances of the case afforded a complete justification for the measure now before the Council.

The Hon'ble MR. HOPE begged the permission of His Excellency the President to explain that his remarks had no reference either to the principle of the Bill, or to the propriety of relieving the Revenue officers of judicial work —in which he entirely concurred—or to the area of their jurisdiction. His remarks simply had reference to exactly what they contained—namely, that he thought the Council, in passing the Bill, should be aware of the fact that they were thereby placing the Courts further off from the homes of the people.

The Hon'ble MR. COCKERELL had only one observation to make in reply to what had fallen from the Hon'ble Member on his right (Mr. Hope).

The hon'ble gentleman was a Member of the Select Committee on this Bill, and yet he had not in Committee, so far as he (MR. COCKERELL) could remember, at any time raised this question of the possible inconvenience to the people arising out of the reduced number of Civil Courts which would be one of the results of this Bill being passed into law. At all events, he could say positively that his hon'ble friend had not put the question—to use the technical phrase—"directly and substantially in issue" before the Committee; had he done so, he (MR. COCKERELL) had little doubt but that he could have met the question with

statistics to show that the Hon'ble Member's apparent apprehensions were not well grounded. He might remark also that the Hon'ble Member had apparently, in his conjecture as to the evil or inconvenience that might be caused through the reduced numerical strength of the Civil Courts in Oudh, taken no account of the provisions of section 15 relating to the investment with civil jurisdiction of taluqdárs. He (MR. COCKERELL) could not say how many of these gentlemen were likely to be invested with the powers of Civil Courts, or what appreciable measure of the litigation of the Province was likely to be disposed of through this agency. But he conceived it possible, and even probable, that the Local Government would, where it was likely to operate advantageously in bringing the administration of justice nearer to the homes of the people, readily avail itself of this kind of judiciary for the trial of petty cases, and he could not doubt but that it would prove certainly not inferior in administrative efficiency to the village munsifs of Madras or the patels of the Dekkhan.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA DISTRICT CESSES AND RURAL POLICE BILL.

The Hon'ble Mr. RIVERS THOMPSON introduced the Bill to amend the law relating to District Cesses and Rural Police in British Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Colvin and the Mover. He said that he had endeavoured to explain to the Council at the last meeting the necessity which existed for placing the rural police in British Burma upon a better footing. The progress of violent crime throughout that Province, especially in times of excitement and disturbance on an extensive frontier, had been too plainly proved by the Administration Reports in the Police Department, and he knew, from the most recent one that had come under his notice, that in the last year there were as many as 61 dákáities within British Burman territory, which was a larger number than had been committed in any year since 1872.

The defect in the organization of the village police system, which had been long recognised and had grown with the growth of the Province and the greater and closer supervision given in recent years to all executive measures, had shown to all concerned in the government of the country that a really efficient rural police was very urgently required, not only as supplementary to the regular police, but as a link—and a very valuable one—between the people and the central authority, and that measures with that object had to be seriously consider-

ed, and, if possible, a remedy to be supplied. The subject, he might say, had not been without consideration in previous administrations, but the want of means, coupled with the larger demands for expenditure in other directions, prevented immediate attention to it, and it was only recently, since a larger concession had been made to the Chief Commissioner in his provincial revenue arrangements, that he had been in a position, in a measure, to deal with this important question; still he was bound to say that, whatever concessions had been made to the Chief Commissioner, a somewhat ampler provision was necessary to enable him to carry out an effective and comprehensive police reform. British Burma was still very backward, compared with the position which older provinces had attained, in the administration of many of those departments which were sources of revenue—such as the administration of stamps, excise, the registration of deeds and several others; and, whatever surplus or funds the Chief Commissioner of British Burma might have at his disposal for the improvement and development of those resources, he imagined that very little would be left over to him, after all those requirements were met, for dealing with the question of police organization throughout the province. The Chief Commissioner had accordingly recommended—and he thought, upon consideration, that he was justified in his recommendation—that the local cess now levied upon the land-revenue and the revenue from fisheries throughout British Burma at a rate of 5 per cent. should be doubled. He (MR. THOMPSON) might explain that the practice of levying a percentage upon those revenues for purposes of local utility had prevailed almost since the time that Burma had become British territory. From the days of Sir Arthur Phayre downwards this practice had been followed; but what was done in this way formerly under rules sanctioned by the Governor General in Council and having the force of law had recently been embodied in the substantive land-law of Burma passed by this Council in 1876. That cess was levied in the proportion of one-eighth from the fisheries-revenue, and of seven-eighths from the land-revenue. It was levied over and above the imperial revenues under those heads, and the proceeds, which were entirely at the disposal of the Chief Commissioner, were applied in proportions, which he could fix at his own discretion, for the construction and improvement of district roads, the local postal service, primary education, and chiefly and mainly for the maintenance of the village police.

The funds realized from that cess were used in the districts where they were raised, and they were accepted by the people as taxes which went mainly to improve their own condition. In proposing to enhance the rate from 5 to 10 per cent., it was not intended by the measure under consideration to alter in any way the mode of collection or to divert the funds which would be raised under the Bill from those purely local purposes to which the funds had hitherto been applied; beyond this, that in the eighth section of the Bill it was contem-

plated that, in addition to those purposes to which he had already alluded, there should be included the object of sanitary improvement in villages—an object to which attention had been recently called by despatches from home, and in the desirability of which he thought that the Council would readily agree.

It needed that he should say something as to the reasonableness of the proposal to enhance the rate from 5 to 10 per cent. The justification for all taxation is to be found in the necessities of the State and the ability of the people to pay; and it was, of course, desirable in imposing any extra impost like this that we should be able to show the people not only the needs of Government, but also that the funds realized from such taxes were intended for their own personal benefit and the general public interest. He did not propose to trench in any way upon the department of his hon'ble colleague and friend Sir John Strachey as regarded the necessities of the State. It was well known to the Council that the financial depression which at present existed was caused by circumstances which, without any figure of speech, were absolutely and entirely beyond the control of the Government, and while those causes remained in operation our object must perforce be—if we did not desire to increase imperial taxation, which he knew we did not—to restrict expenditure rather than to expand it. But, even with this financial pressure upon the Government, a much more generous, though perhaps he would better describe it as a much more just, consideration had been shown to the claims of British Burma, which was one of our most flourishing provinces; and he was satisfied that, with the resources now placed at the Chief Commissioner's disposal, we should, under his auspices, secure very soon a full and commensurate return for whatever we had accorded to him. However, having made those concessions to the province, it was not to be expected that any additional help should be afforded from imperial resources for carrying out reforms and measures such as those contemplated by the Bill; and when we saw that the improvement and reformation which we desired under this Bill were directed to purely local purposes and local objects, it was reasonable that we should look to the people themselves for supplying the funds necessary for carrying them out. Now, the burden of this impost of 10 per cent. upon the land-revenue might be calculated in a measure from the incidence of the land-revenue upon the country; and by universal accord—both from past experience and recent reports—it was admitted that the revenue assessment in British Burma was exceedingly light. It would be surprising if it was not so. Nearly everything in connection with the conduct of the revenue administration in British Burma depended upon the intelligence, industry and honesty of a single official—the Thoogyee. He measured the land, assessed the revenue, collected the revenue and, indeed, all the other taxes; and it was found from the extent of District jurisdictions and the difficulties of inter-communication that, in a great measure, he was left without

any proper control, and was therefore independent of that supervision which was necessary in the discharge of such important duties. The annual measurements which practically prevailed, except in a few cases in which settlements had been made, had by their frequency and uncertainty opened a door to innumerable frauds; and he was sure that His Lordship and the Council would agree that an unscientific settlement was as obnoxious and objectionable as an unscientific frontier. The result of bringing the work of these Native officers to a test—which had been done in his own time in Burma in one of the most fertile districts of the province, by comparing the measurements of area made by the Thoogyee with the measurements effected by a more detailed and proper survey—showed a discrepancy of 24 per cent., and in the revenue an actual discrepancy of 28 per cent. In both instances the advantage, of course, was in favour of the cultivators. All this, he was glad to say, was about to be remedied. We had already taken measures to introduce into the Province a cadastral survey; and from the arrangements now being carried out, he hoped during the next cold season to see a very appreciable advance made in an accurate survey of the most advanced Districts in the Province, with the certain result of placing both the revenue and fiscal administration upon a better footing and of enabling the Government of India, if it should so deem it right, to consider the question of abolishing what was a very unsound, and in its incidence a very unjust, tax, that was, the capitation tax which now prevailed in the country.

He had entered upon this explanation to show that, with a very light land-assessment throughout Burma, the 10 per cent. assessment which this Bill proposed to realize as a cess for local purposes and objects would not press with any severity upon the people; and in support of this statement he would revert to a few practical details which illustrated very clearly the position and profits of the agricultural community in Burma. It was well known that there was a very large export of rice, the staple produce of the province, from all the ports in Burma. It amounted now to something over 800,000 tons in the year, and the demand was so large and continuous that it gave a very great and effective impulse to the clearance of land and the cultivation of rice throughout the Districts. When he first went to Burma, and almost within a week after his arrival, it was talked of as an unprecedented rise in the price of this commodity that it was selling in Rangoon at Rs. 66 for the hundred baskets—a measure equivalent to the English bushel. The ordinary price of paddy had averaged at a not advanced period of the season between Rs. 45 and 50, and it was thought incredible in the month of April that Rs. 66 should be demanded. Within three years afterwards the price had risen, during the middle of the season, from Rs. 66 to Rs. 100 and Rs. 120 per hundred baskets, and in speculative seasons it reached the figure of Rs. 130. He believed, from

recent returns, that not only had those high prices been maintained, but, in several instances, they had even gone beyond to Rs. 140 and Rs. 145 per hundred baskets. Now, he was aware that it had been said that the cultivator did not realize the whole profits of his produce, and that the intervention of middlemen between the raiyat and those with whom he dealt caused a considerable reduction of those profits; but he (Mr. THOMPSON) had considerable confidence in the shrewdness and sagacity of the Burman; and, though in outlying parts the brokerage system found a place and the raiyats were often induced to take money at disadvantageous loans before their crops were reaped, it was generally the case that the Burman was quite equal to the occasion in bargaining for his grain, and, if report be true, that often, indeed, he was more than a match for the combined action of the Chamber of Commerce of Rangoon. Again, the opening of the railway in Burma, which passed through some of the richest tracts of the country, had placed the cultivator in direct relation with the mill-owners who prepared the rice for the English markets: and, for himself, he had no reason to doubt that the greater proportion of the rise in the price which had resulted in the last three or four years from the competition in Rangoon had gone almost entirely into the pocket of the agriculturist.

Well then, what were the deductions from those facts? It was found that an acre of indifferent land in an ordinary district in British Burma produced about 25 baskets of rice; an acre of medium land gave 45 baskets; and an acre of superior soil rendered about from 70 to 80 baskets. The assessment on rice-growing land in British Burma varied from 6 annas an acre on poor soil to Rs. 2-4 on the best soil. The average was about Rs. 1-6 per acre. This assessment had been generally continued without any variation; and if when it was first imposed the price which was realized for the produce was at the rate of Rs. 45 to Rs. 50 per hundred baskets, and we now found that the average was from Rs. 100 to Rs. 120 per hundred baskets, and that the gain upon the acreage had risen on an average on the poorest soil to Rs. 23-5 an acre; on medium soil to Rs. 42 an acre; and on the best soil to Rs. 50 an acre, it went without saying that the Government was not receiving its due share of the revenue derivable from the land. All those circumstances in his opinion justified the imposition of a higher percentage now in the form of a local cess where it was to be devoted to purely local objects of utility. It was due to the present Chief Commissioner to say that he had brought this point very prominently before us. Burma had rejoiced for many years in a very conservative administration; and the officers in the commission there, brought up at the feet of Sir Arthur Phayre, one of the most able administrators whom India had ever produced, were inclined to contend that what was good for his time was good for all ages; and so there had been an occasional difficulty in getting those with whom the Chief Commissioner had to act to realize the necessity of such changes

as the present Bill contemplated. They considered that the 5 per cent. cess upon the land-revenue was sufficient for all purposes, and if for some time he himself had shared that conviction in the belief that British Burma had for very many years before the introduction of the provincial system been paying a local cess which in other provinces was only introduced with the introduction of the provincial system in 1871, still, when he found that during the last seven years the local cesses throughout India had been very considerably raised for purposes of local requirement, and that, in addition to those, a famine insurance-fund in one form or another was applied to the different provinces last year, from which Burma was entirely exempted, he thought the time had come when we might fairly say that, in view of the very light assessment realized from the land-revenue in British Burma, it was reasonable and equitable to enhance the cess by the addition of 5 per cent. What was now realized under this cess amounted to a little over two lákhs of rupees, so that the whole cess, when doubled, would give something more than four lákhs of rupees in the whole province of British Burma.

Having explained the circumstances which in his opinion justified the enhancement, he would now allude briefly to other sections of the Bill. They were explained generally in the Statement of Objects and Reasons. He might say definitely that there was no intention whatever of disturbing or interfering with the indigenous system of rural police, the object of the Bill being to provide for the strengthening and better organization of that body. He had already explained all that was necessary with regard to the enhancement of the cess on the land-revenue; and he would now add—as the Statement of Objects and Reasons put it—that,—

" as it would be obviously unjust to throw completely upon the agricultural classes the burthen of providing for expenditure by which the non-agricultural population of the villages and rural towns will equally benefit, the Chief Commissioner has been empowered to impose a house-cess, not to exceed two rupees per house, on persons who do not pay the agricultural cess. "

It should be stated that already a house-tax existed in a great many towns in British Burma, and that where that tax was found to exist the new house-cess would not be imposed.

Opportunity had also been taken under the Bill to provide—

" that the inhabitants of any town, village or hamlet are bound to aid in the prevention of dákáiti and robbery in such town, village or hamlet, and, when such offence has been committed, to aid in securing the offenders. "

It had been too often found that the inhabitants had held aloof from giving any aid in the repression of crime. This arose partly from fear of the criminals, partly from apathy; and power would be taken under the Bill to

enforce by rules their obligation to give that assistance, or in case of refusal to punish them.

This was the general scope of the Bill, and he had now the honour, in submitting it to the Council, to move that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, the Hon'ble Mr. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. THOMPSON also moved that the Bill be published in the *British Burma Gazette*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Foreign Jurisdiction and Extradition Act, 1872, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Cockerell, Colvin and Hope and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 7th August, 1879.

SIMLA;
The 24th July 1879.

D. FITZPATRICK,
Secretary to the Governmeent of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 338, L. D.—4-8-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 21st August, 1870.

PRESENT:

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., Senior Member of the Council of the Governor General, *presiding*.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1861, section 20.

The Hon'ble MR. STOKES asked leave to postpone the motion that the Report be taken into consideration and the motion that the Bill be passed.

Leave was granted.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill relating to Merchant Shipping. He said that the object of the Bill was to make eight amendments in the law relating to merchant shipping, which he would briefly specify:—

First, to extend to this country the principal provisions of the Statute 39 & 40 Vic., c. 80 (commonly called "Plimsoll's Act"), relating to the seaworthiness of ships, the stowing of grain-cargoes, and the marking of ships with deck and load lines;

Secondly, to provide for the examination and licensing of fit persons to be marine surveyors, and for prohibiting unlicensed persons from acting as marine surveyors in any port in which there might be a licensed surveyor;

Thirdly, to provide for the appointment of receivers of wreck, here following the precedent of the English Merchant Shipping Act of 1854;

Fourthly, to provide for the appointment of persons to inspect ships for the purpose of seeing whether they were properly furnished with lights, and with the means of making fog-signals, in accordance with the regulations for preventing collisions at sea;

Fifthly, to provide for the appointment of a Port-inspector, who would not only perform the duties at present performed by the Health-officer, but would inquire into any complaints which might be made on the arrival of a ship in port by any of the crew against the master or any other of the crew;

Sixthly, to amend the Indian Merchant Shipping Act, 1875, so as to give power to hold Marine Courts of Enquiry in certain cases which were at present unprovided for;

Seventhly, to empower the Local Governments to fix a minimum scale of provisions for lascars or Native seamen; and

Eighthly, to provide for the conveyance home of distressed Asiatic seamen in Indian waters, and to fix a reasonable rate of allowance for their subsistence when on the voyage.

The Motion was put and agreed to.

PLEADERS BILL.

The Hon'ble Mr. Stokes presented a further Report of the Select Committee on the Bill to amend the Pleaders, Mukhtárs, and Revenue-agents Act, 1865. He said, with the President's permission, that the changes made in the Bill since the presentation of the former Report were carefully enumerated in the present Report. Only two required special notice. One was the provision in section 28 that agreements between pleader and client regarding the remuneration for services rendered by the former should always be in writing and be filed in Court, and the further provision in section 29 that, when a suit was brought on such an agreement, the Court, unless the transaction were proved to be fair and reasonable, might reduce the amount payable under it or set it aside altogether.

These provisions were, it was thought by the Committee, better suited to this country than the elaborate rules contained in the English Statute 33 & 34 Vic., c. 28, sections 4, 5, 8, 9 and 10.

The other was the penalty which section 36 would impose on the practice of giving or receiving commission on fees paid to legal practitioners. This shameful practice was injurious in many ways. First of all, it injured the interest of those whom the recipients of the commission were bound to protect. On this point MR. STOKES would quote Sir Richard Garth :—

"I will explain the way in which the evil works by an illustration founded on fact.

A mukhtár is employed by his client (a zamíndár of eminence) to retain Counsel in Calcutta to conduct a case in the Mufassal.

He is entrusted for this purpose with a liberal retaining-fee (of say Rs. 1,000), with which it is of course his duty to obtain the best professional talent which such a sum can procure.

But the mukhtár's first object is to take care of himself; and, although, for his own credit as well as his client's benefit, he is willing to obtain the best assistance he can, he will only do so subject to his own interests being first provided for. Accordingly, he applies in the first instance to some gentlemen of eminence at the Bar, and offers him the case and the fee, provided he will return him some 25 per cent. of it for his own commission.

The offer is of course indignantly refused; whereupon the mukhtár descends lower, and eventually retains some far less competent, as well as less conscientious, Counsel, who is content to share with him both the fee and the dishonour, and to allow him a much larger commission than he would have dared to ask from a Barrister of good position.

The result is that the mukhtár's client is cheated. The money which he gave for one purpose is fraudulently misappropriated to another; the case is not conducted nearly so well as it would have been in the hands of an abler Advocate; and the more honourable and eminent members of the Bar are thus supplanted by others of inferior character and position.

Secondly, it sometimes imposed an undue liability on the litigant to whom the practitioner giving the commission was opposed. Thus MR. STOKES was credibly informed that in one of the Districts of Lower Bengal a certain wealthy litigant, who was constantly engaged in suits, habitually gave his mukhtár a certain sum, say Rs. 200, to fee his pleader. The mukhtár might get back any commission he could for himself; but it was an essential part of the arrangement that the pleader was to give back a certain percentage of the fee (say 20 per cent.) to the client himself. The pleader gave a receipt for the whole sum, Rs. 200; and if he was successful and costs were decreed, the Rs. 200 were charged against the opposite party, so that the latter was made to pay a sum to the client under the name of pleader's fee, which the client had in fact never paid to the pleader at all.

Thirdly, the practice demoralized the practitioners who consented to give commission.

Fourthly, it inflicted great hardship on the younger men who honourably refused to submit to it.

Lastly, it led to the bringing and maintaining of many frivolous suits and appeals, and thus wasted the time of the Courts and the money of the suitors.

This salutary addition to their penal law was strongly recommended by the Chief Justice of Bengal and the Madras High Court; and MR. STOKES trusted that nothing would prevent its enactment at an early date.

In the meantime the Committee would further consider and finally decide on the expediency of empowering the Chief Court of the Panjáb to make rules for the admission of Advocates in that Province.

HACKNEY-CARRIAGES BILL.

The Hon'ble MR. THORNTON presented the Report of the Select Committee on the Bill for the regulation and control of Hackney-Carriages in certain Municipalities and Cantonments.

SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Thornton be added to the Select Committee on the following Bills:

To provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons.

To make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

The Motion was put and and agreed to.

The Council adjourned to Thursday, the 4th September, 1879.

SIMLA;
The 21st August, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for the 7th instant was postponed to the 21st instant.

Govt. Central Press.—No. 449 L. D.—6-2-80.—80.

SECRETAR

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 4th September, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

HACKNEY-CARRIAGE BILL.

The Hon'ble MR. THORNTON moved that the Report of the Select Committee on the Bill for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments be taken into consideration. He said that the Bill, as an effort of legislation, was of the humblest character; but, judging from the remarks and criticisms received from the several Local Governments affected by its provisions, it would appear that it had, at any rate, one merit—the merit of being wanted.

It further appeared from the replies received from the same authorities that the provisions of the Bill, as introduced, were considered generally suitable. One critic, indeed, had expressed the opinion that too much power had been left in the hands of local authorities, and that it would have been better if many of the rules which it was left to those authorities to frame had been specifically enacted by the legislature. This point had, however, been duly considered by the framers of the Bill; but it was felt that the territories to which the measure was to extend were so vast, and their circumstances so

widely different, that such a course, however desirable from some points of view, would be impracticable. The course adopted—which had met with general approval—had been to make the Bill an enabling one, to indicate clearly and specifically what the local regulations might, and ought to, provide for, and to leave the details to be filled in by the municipal and local authorities concerned, subject to the confirmation of a central authority—the Local Government—and to the control of the Government of India. Hereafter, when more practical experience had been gained, it might be desirable that each of the Provinces affected should have one set of regulations in force throughout its limits; but that was a matter of local interest which might be safely left in the hands of Local Administrations.

So much for the general design of the Bill. In regard to its details, several valuable suggestions had been received, which had been embodied in the Bill as now amended; and some further amendments and additions had been made by the Select Committee after consideration of the provisions of similar enactments in force in India and in England. He would not trouble the Council by detailing the amendments thus introduced. It would suffice to say that they would all, it was believed, commend themselves at once to the approval of the Council and the public.

He would observe, in conclusion, that the framers of the Bill had had four somewhat conflicting interests to deal with and, if possible, reconcile—the interests of the passenger, the interests of the proprietor, the interests of the driver, and the interests of the horses. They had endeavoured to the best of their ability to deal fairly with all these interests, and he hoped, if the measure was permitted to become law, the result would be ultimately beneficial to all parties and no inconsiderable addition to the comforts of existence in the towns and cantonments of the interior of India.

The Motion was put and agreed to.

The Hon'ble Mr. Thornton then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MERCHANT SHIPPING BILL.

The Hon'ble Mr. Stokes introduced the Bill relating to Merchant Shipping, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Thornton and Hope and the Mover. He said that he had already explained that this miscellaneous but useful measure was intended to

effect in the British Indian law of Merchant Shipping eight amendments, of which the introduction of Plimsoll's Act (39 & 40 Vic., c. 80), as to unsafe and unseaworthy ships, was by far the most important.

The minor amendments were so fully described and explained in the Statement of Objects and Reasons that he would not take up the time of the Council by commenting upon them. But a brief exposition of the principal provisions of chapter II, which corresponded with Plimsoll's Act, would, he thought, be not altogether useless.

Section 4 of the Bill and the Act declared that whoever should send a ship to sea in such an unseaworthy state that the life of any person was likely to be thereby endangered should be punished with imprisonment or fine, unless he proved *either* that he used all reasonable means to insure her being sent to sea in a seaworthy state, *or* that her going to sea in an unseaworthy state was under the circumstances reasonable and justifiable. MR. STOKES found from a useful commentary on the Act, which had been published by its draftsman, Mr. Ilbert, that this provision had been objected to in England on the ground that it threw the burden of proof on the defendant; but it was perfectly right. The prosecution must show in the first place that the ship was sent to sea in an unseaworthy state. This raised a presumption (here under section 114 of the Evidence Act) of guilt on the part of the defendant; and the burden was thrown upon him to discharge himself by proving either that he used all reasonable means to make the ship seaworthy, or that the sending to sea was justifiable. These facts the defendant alone could prove, and the burden of proving them was rightly thrown on him. Similarly, in the case of stolen goods. If it were proved that a man was in possession of stolen goods soon after the theft, the Court might presume that he was either the thief or had received them knowing them to be stolen. He must then discharge himself, if he could, by proving that he came by them honestly.

As to the provision enabling the defendant to plead that the sending the ship to sea in an unseaworthy state was justifiable, that was intended to meet the case of a ship which had been badly damaged at sea and had taken refuge in a port where it was impossible to repair her satisfactorily. She would probably be patched up and sent to the nearest place where she could be conveniently repaired; and, assuming that no risk was recklessly incurred, it would be unreasonable, under such circumstances, to hold her owner or master guilty of a criminal offence merely because she was not perfectly seaworthy when she left her port of refuge.

It was unnecessary in India to justify the provision enabling the defendant to give evidence in his own behalf. It was obviously in favour of an innocent

defendant; and Mr. Ilbert said that, in the few cases which had arisen at home under the Acts of 1871 and 1875, it had always been made use of by the incriminated shipowner.

We then came to section 5. The Common Law rule was that a master was not liable to pay compensation to a servant for the consequences of a risk incident to the contract of service, and that an accident caused by the negligence of a fellow-servant was such a risk. Now the object of section 5 was to modify this rule so as to render the shipowner liable to seamen, not only for his personal neglect, but also for that of certain of his agents, who were technically, but were not to ordinary understandings, "fellow-servants" of the seamen. The section also prohibited the shipowner from contracting himself out of the obligation thus imposed—an obligation which, by the way, was continuous, being not merely to make the ship seaworthy, but to keep her so during the voyage to which the contract related.

The Bill enabled the Government to detain a ship provisionally; and section 27 provided rules as to liability of Government for the costs of the detention and survey where the ship was provisionally detained and it appeared that there was not reasonable and probable cause for such detention. Section 28 also provided a rule as to the liability of the shipowner for costs where the ship was finally detained, or where it appeared that she was unsafe at the time of provisional detention. But there was no provision for the case which would sometimes occur, namely, where there was reasonable and probable cause for the detention but the ship was, at the time of detaining her, as a matter of fact, not unsafe. In such case each party would, in England, bear his own costs, and it was presumed that the same result would follow in this country.

Section 32 declared how grain-cargo should be stowed so as to be secured from shifting, and imposed a penalty of Rs. 3,000 for improper stowage of such cargo. The penalty was heavy, but it would probably be seldom incurred; for a more effectual sanction for this section would be found in the fact that a shipment contrary to its provisions would endanger the validity of any policies of insurance effected on the voyage. Thus in *Cunard* v. *Hyde*, 2 E. & E. 1, the Court of Queen's Bench decided that where a deck-cargo was put on board with the privity of the owner, whereby the object of an Act of Parliament was defeated, and whereby the vessel sailed upon an illegal voyage, a plea stating these facts would be a good defence to an action on the policy; and this decision was cited with approval by Blackburn J., in *Dudgeon* v. *Pembroke*, L. R. 9 Q. B. 585.

The Statement of Objects and Reasons said that, in adapting to India an English Act of this nature, it seemed advisable to make the Indian Act as

nearly as possible identical with the English one, and that in drafting this chapter the provisions of 39 & 40 Vic., c. 80, had, therefore, been followed as closely as possible. There would, he thought, be no dispute as to the general propriety of this course. But in the present case the Legislative Department had gone a little too far, and, like Chinese tailors, copied the patches on the garment given to us as a pattern. Thus the proviso to section 5 might be construed as implying that there were circumstances in which the shipowner was not bound to use all reasonable means to ensure the seaworthiness of his ship. It was objectionable also on other grounds, for (as Mr. Ilbert remarked) if, for the sake of convenience or economy, a ship was sent to sea in an unseaworthy state and loss of life was caused by her unseaworthiness, it was not clear why compensation should not be paid to the families of the deceased persons. Criminal liability was quite another matter. This proviso was inserted in committee by the House of Commons, and should, MR. STOKES thought, be omitted. Again, section 38 imposed a penalty on any owner or master of a ship who allowed her "to be so loaded as to submerge *in salt water* the centre of the disc." This clause was also inserted in committee; and the effect was, if construed literally, to subject a shipowner to a penalty whenever his ship did not stand exactly upright in perfectly smooth water. A single sea-wave submerging the disc on either side would render him liable to a fine of Rs. 1,000. Of course, these defects and any others that might be pointed out by the mercantile community would be removed by the Select Committee to which MR. STOKES trusted the Bill would now be referred.

The Hon'ble SIR EDWIN JOHNSON enquired whether the exemption of ships, under clause 3, extended to ships temporarily taken up by Government for military purposes.

The Hon'ble MR. STOKES said that, if such ships were in the service of Government, they would be exempted. It might, however, be well to insert some words in committee, such as "permanently or temporarily in the service of Government," to make the matter quite clear. The point was not of much practical importance; for, as the Secretary had just suggested to him, ships taken up in this way were always carefully surveyed by Government officers, and after such survey it was highly improbable that they would be detained under the Act.

The Hon'ble SIR EDWIN JOHNSON remarked that he thought there might be a possibility of vexatious detention in such a case.

The Hon'ble MR. STOKES did not think it likely that any vexatious detention could occur, as the persons authorized to detain ships would always be officers of Government or judges of the Courts of Survey.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He took the opportunity of mentioning that the propriety of exempting Lloyd's Surveyors from the operation of sections 65 and 66 would be duly considered by the Select Committee, and that that Committee would not commence its sittings until the Council had re-assembled in Calcutta, by which time he trusted that they would be strengthened by the addition of a mercantile member.

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. THOMPSON presented the Report of the Select Committee on the Bill to appoint Commissioners for the Port of Rangoon.

SALT TRANSPORT BY SEA BILL.

The Hon'ble MR. HOPE asked for leave to postpone the presentation of the final Report of the Select Committee on the Bill to restrict the transport of Salt by Sea.

Leave was granted.

The Council adjourned to Thursday, the 11th September, 1879.

SIMLA;
The 4th September, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 425, L. D.—8 9-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 11th September, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to appoint Commissioners for the Port of Rangoon be taken into consideration. He said that the Bill, which was originally drafted by the Chief Commissioner of British Burma, had been subjected to careful revision by the Select Committee. The points in which amendments had been introduced referred chiefly to the exclusion of sections which formed part of the original draft, regarding which it had been found on examination, that provision already existed in other Acts, and their repetition, therefore, in the present Bill was not necessary. These related to provisions connected with the Indian Ports Act of 1875 and to the section which conferred powers of borrowing money, which was provided for by the Local Authorities Loan Act passed in Council the other day. The amendments which the Select Committee thought desirable with reference to the exclusion of these sections had been fully accepted by the Chief Commissioner as also other amendments, referring partly to the schedule of the Bill, which reserved from the jurisdiction of the Commissioners of the Port all lands which it was desirable to reserve connected

with the defence of the Port, land required by the Railway and a small portion now in the possession of the Municipality. The rest of the land was made over to the jurisdiction of the Commissioners, with the balance now in the hands of the Strand Bank Committee, which would be applied for the purpose of carrying out the Port-trust. He believed that, if the Bill was passed, it would be one of great benefit to the Port of Rangoon.

The Motion was put and agreed to.

The Hon'ble MR. THOMPSON also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRANSPORT OF SALT BILL.

The Hon'ble MR HOPE presented the final Report of the Select Committee on the Bill to restrict the transport of Salt by Sea.

RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES presented a preliminary Report of the Select Committee on the Bill to provide for the holding of property by certain Religious Congregations. He said that the Committee had extended the operation of the Bill to property of every description held by religious bodies, and had added a section providing for a reference to the High Court in the event of doubt arising as to whether any person was a member of a religious body, or as to the validity of any appointment made under the Act. They had also added sections providing for the dissolution of the religious bodies to which the Bill applied, and for the disposal of their property when they were dissolved. Those changes were considered to be so important that the Committee had recommended that the Bill as amended be published.

The Council adjourned to Thursday, the 25th September, 1879.

SIMLA;
The 11th September, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt C B Press, Simla.—No 451, L D.—15 9 79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 30th September, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.

TRANSPORT OF SALT BY SEA BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to restrict the transport of Salt by Sea be taken into consideration. He said that the Bill, although it was an old friend, and although it could scarcely be said to come before us again with a new face, still as two-and-a-half years had elapsed since last we had the pleasure of seeing it, he thought it would be as well to call to mind the circumstances under which we had parted, and the fortunes which had occurred to it in the interval.

The Bill was last before the Council on the 28th of February, 1877, when he had the honour to present the report of the Select Committee. The Bill as it then stood prohibited the carriage of salt by sea by vessels of less than 300 tons burden unless covered by a permit, rawána or pass. It gave powers of stoppage, search and arrest, and prescribed penalties for the infraction of the rules laid down. It was intended to take effect on the western coast of British India at once, and on the coast of the Bay of Bengal and elsewhere whenever applied by the Governor General in Council. The Hon'ble Mr. Dalyell objected to the Bill at the time of the presentation of the report, on the ground that it would cause serious annoyance to the small craft by

which salt-traffic on the coast and over-sea was carried on, and, moreover, that there was no satisfactory evidence of any large amount of smuggling. As regarded Madras, he thought that the large class who carried salt in small vessels would be unnecessarily interfered with ; and as regarded Bombay, he considered that the contemplated levy of duty before shipment and negotiations with Portugal would do away with smuggling connected with foreign salt, the extent of which, moreover, seemed to him very much exaggerated. As there was then no motion before the Council, no vote took place on Mr. Dalyell's remarks, and the Bill was republished, as recommended by the Select Committee. But, as in the meantime the negotiations with the Portuguese Government commenced, and as also the general question of the salt-duties came under consideration by the Executive Government, it was thought best that the Bill, having been carried thus far, should not be proceeded with for a time, until it was seen what effect would be produced on it by the settlement of these pending issues. The first solution of the difficulty came with regard to the east coast. In December 1877 the salt-duty in Madras and Bombay was raised, and the Bill which he had had the honour to introduce into this Council (and which was passed as Act XVIII of 1877) made obligatory the prepayment of duty on all salt previous to removal from the works, and, consequently, on all salt removed by sea from any port in Madras to any other port, whether in Madras or elsewhere. It thus cut off all smuggling at the source; and, as the Madras Government now assured us that the Act was fully carried out, all present necessity for legislation regarding the east coast had been removed. The next solution of the difficulty came much more tardily, in the shape of the treaty with Portugal, which will take effect on the 6th proximo. This treaty conferred on the British Government the exclusive privilege of regulating and undertaking the manufacture and sale of salt in Portuguese India, so that such smuggling as would otherwise be likely to arise from manufacturing the salt in Goa would cease. On the other hand, owing to the nature of our arrangements with Travancore and Cochin, the prepayment of duty on salt shipped from Bombay for these States could not be carried out at present as had been expected. Moreover, it would be seen, from Paper No. 6 before the Council, that other places, which for obvious reasons he abstained from mentioning, possessed considerable facilities for the manufacture of salt and the smuggling of it ashore in British India. Under these circumstances, the Bombay Government considered that it was indispensable that the Bill should be applied to the western coast.

As to the Bill itself, the executive sections, Nos. 3 and 7, retained the form in which they were carefully settled by the Committee in Calcutta, of which the Hon'ble Mr. Bullen Smith, one of the mercantile community, was a member.

The application of the Bill would, however, as he had explained, be confined to the western coast of British India north of Cochin, and a section had been added empowering the Governor General in Council to exempt the carriage of salt within any local limits, or in any class of vessels, from the operation of the Act. This had been inserted chiefly with a view to the possibility of exempting the Madras districts of Malabar and South Kanára in the event of satisfactory arrangements being concluded hereafter with Travancore and Cochin. The only other alteration he need mention had been made in accordance with the opinion of the Law Member. "A marine league" from the coast was fixed in section 1 of the Bill as the distance seaward to which the Bill would extend.

The Hon'ble MR. STOKES said that he would make a few remarks in support of the opinion to which the Hon'ble Mover had referred, namely, that the Bill might properly be made to extend to a marine league from the coast of British India. It was clear that, for certain purposes, the jurisdiction of Colonial legislatures extended to some distance seaward from the shore. In an opinion given in 1855 by Sir J. Harding, Sir A. E. Cockburn and Sir R. Bethell, the then law officers of the Crown, and printed at page 24 of Mr. Forsyth's *Cases and Opinions on Constitutional Law*, they said, with reference to British Guiana: "We conceive that the Colonial legislature cannot legally exercise its jurisdiction beyond its territorial limits—three miles from the shore." This was equivalent to saying that within these limits—within what was called territorial water—it might exercise its jurisdiction. Again, in an opinion given by the Queen's Advocate in 1854 on the question within what distance of the coasts of the Falkland Islands foreigners might be legally prevented from whale and seal fishing, he said: "Her Majesty's Government will be legally justified in preventing foreigners from whale and seal fishing within three marine miles (or a marine league) from the coasts, such being the distance to which, according to the modern interpretation and usage of nations, a cannon-shot is supposed to reach." It must be admitted that the authority of the former of these opinions, if taken in its full generality, had been greatly diminished by the decisions of some of the Judges in the celebrated *Franconia* case (*The Queen* v. *Keyn*, 2 Exch. Div. 63), and that the old doctrine of the three-mile zone forming part of the territory of a littoral state as though it were so much land could hardly now be followed. It must, he thought, be now held by English lawyers that, by the principles of international law, a maritime State had legislative power over the sea beyond low-water mark and within a reasonable distance from its coasts, but that such power was only for certain limited purposes, and did not extend to a general sovereignty over all passing vessels. But Judges such as Sir R. Phillimore and Chief Justice Cockburn, and jurists such as Merlin and

Manning, agreed in regarding the prevention of smuggling—in other words, the protection of customs-revenue—as one of those purposes. The others were probably—in the absence of judicial decision it was impossible to speak positively—the regulation of fisheries, the exaction of harbour and lighthouse dues and the protection of the territory from violation in time of war between other States.

The question then was what might be deemed to be a reasonable distance from the coast of British India within which we could exercise this special right of jurisdiction or dominion. Now, France, he believed, subjected all vessels to her customs laws to a distance of five leagues from shore. But Parliament in a recent Act, 39 & 40 Vic., c. 36, for the consolidation of Acts relating to the Customs, had enacted (section 179) that, if a foreign ship were found within one league of the coast of the United Kingdom conveying spirits or tobacco otherwise than in packages of a certain size and kind, the articles in question as well as the ship herself should be liable to forfeiture; and any foreigner found on board any ship so liable to forfeiture within one league of the coast and having on board any spirits or tobacco in such packages was to forfeit a sum not exceeding £100. It would seem, therefore, that Parliament thought one league a reasonable distance from the shores of Great Britain and Ireland within which to take measures for the protection of its customs-revenue against foreign vessels and foreigners; and in the case of this Bill, the object of which was to protect the British Indian salt-revenue, we could not do better than follow the English precedent. That this Council could legally do so was, MR. STOKES thought, reasonably clear. For, even though it should be contended that under the words of the Indian Councils Act of 1861 our legislative authority extended only to the Indian territories then under Her Majesty's dominion, and that the bed of the sea to the extent of three miles from the beach could not now be held to be part of those territories, a statute was always construed as impliedly giving powers absolutely essential to the privilege granted; and jurisdiction to legislate, as the Bill proposed to do, for the protection of the revenue of those territories was a necessary incident to the general power of legislation expressly conferred upon us for the benefit of British India.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

VACCINATION BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved for leave to introduce a Bill for the prohibition of the practice of inoculation and to make the vaccination

of children in certain Municipalities and Cantonments compulsory. At the request of the Hon'ble Member, Mr. Fitzpatrick read to the Council his remarks on the Bill, which were as follows :—

"My Lord,—In asking leave to introduce a Bill into the Council making vaccination compulsory, I am supported by a sincere conviction that I am suggesting a law consistent with the policy of humanity and toleration which has been the guiding principle of the British Empire in India. The British rule in India has exerted itself in the direction of securing human life from the disorders of rapine and the calamities of famine: sanitary measures have been adopted on a large scale to secure the cleanliness of towns and to check the growth of epidemics : vaccination has been undertaken by the State, and much success has, no doubt, been achieved. But the sad events which come to light every year show that there is much room for improvement, and that vaccination has not yet been sufficiently employed as a protection against the ravages of small-pox. The statistics for the year 1877 show that during the previous five years the number of deaths caused by small-pox in the Panjáb, the North-Western Provinces, Oudh, the Central Provinces and British Burma has been no less than 459,480, thus giving an enormous average of 91,866 deaths every year. And this calculation does not include the deaths caused by the malady in the Native States of the Panjáb.

"My Lord, there was a time when the people of this country had prejudices, to which superstition and ignorance had given birth, against the practice of vaccination. But the time has now arrived when such notions no longer find place in the minds of the gentry of India. Education and experience have opened the eyes of the people ; and I have no hesitation in saying that it is extremely rare to find men among the gentry of the land who look upon vaccination in any other light than as a safe and salutary practice. This is proved by the fact that vaccination has already become common, and has met with no resistance in those provinces in India (like Kumáon) where the power of the executive authorities has been duly exerted in favour of vaccination, and where the proportion of deaths caused by small-pox is much less than in other parts of India. I therefore think that, considering the circumstances of the country and the acknowledged efficacy of vaccination, there exist sufficient reasons to justify the State in making that sanitary measure compulsory by law.

"My Lord, I am one of those who look upon all compulsory legislative measures as justifiable only in cases of extreme necessity. Personal liberty of the subject is one of the greatest and dearest privileges which have been conferred upon this country by the British rule; and, in common with millions of my

countrymen, I hold them sacred. But the exigencies of the case which I have the honour to bring to the Council's notice demand the introduction of compulsory measures of legislation for the security of human life. Small-pox is a disease not confined to individuals or localities. It attacks persons of all classes, usually at a period of life when its victim is still in his cradle and his intellect still in its infancy. Its ravages extend chiefly to innocent children too young to take care of their lives, too young to have adopted any preventive remedies which science has provided. Nor are the effects of the disease confined to those whom it first attacks. The infection carries it from neighbour to neighbour, and those who suffer from the calamity may be said to be instrumental in inflicting it upon others. My Lord, if this view is supported by the undeniable results of science, the question no longer remains one of only personal liberty. Even if it be granted that a man has a right, if he chooses, to die of small-pox, no respect for personal liberty would justify the harm which he does to his neighbours by conveying infection. Compulsory vaccination is thus a measure for the protection of the lives of innocent children from the results of the folly of their parents and for the security of grown-up persons from the sanitary evils which arise from the ignorance or apathy of their neighbours. This argument, apparent to every intelligent mind, justifies the introduction of a law making vaccination compulsory in India. My Lord, I have carefully considered the difficulties which exist in putting such a law into practice; and I am aware that there are some parts of India which have not yet reached the stage when the enforcement of such measures would be advisable. The proposed Bill will, therefore, not be generally compulsory. It is not meant to be applicable to those parts of India which possess local legislatures, and its operation will be confined to such municipalities and military cantonments in British India as the Local Governments in their discretion deem fit to place under the proposed law. The extension of the proposed law to British military cantonments situate in Native States will be left to the power of the Governor General in Council. The object therefore of the proposed Bill is to provide a law to enable the Local Governments of those provinces which do not possess their own legislatures to make vaccination compulsory in such places as they consider fit for the promulgation of such a law.

"My Lord, so far as my experience extends, I have no hesitation in saying that compulsory vaccination would meet with the approval of the gentry of India. Indeed, one of my Hindú friends—a gentleman of good birth and good influence at Benares, the source of Hindú law and religion—impressed upon me the advisability of such a measure, and asked me to do what lay in my humble power to induce your Excellency's Government to adopt measures making vaccination compulsory by law. I have also received, of late, another communication from a respectable Muhammadan gentleman of

one of the districts of the Panjáb; the substance of its paragraph relating to the subject of vaccination I beg leave to bring to the Council's notice.

"He says that he has come to know from certain newspapers that I intend to move in the Legislative Council for the enactment of a law making the vaccination of children compulsory in the North-Western Provinces; and he asks me whether I do not recognize the necessity for such a legislation for the Panjáb also, and whether thousands of innocent children do not succumb to the fatal effects of small-pox every year. He suggests the advisability of extending the proposed legislation to the Panjáb also, and asserts that, though the municipal and district committees in the Panjáb have exerted themselves to the utmost for giving deserved popularity to the practice of vaccination and have even succeeded to a great degree, yet the public are not likely to care much for its benefits unless compelled by law. To expect that people will gradually come to the knowledge of benefits derivable from vaccination and will of their own accord resort to it without necessitating the application of any legal pressure is, he says, a hard-hearted cruelty; and that it reminds one of the old proverb, 'By the time the antidote is fetched from Irak (Mesopotamia), the snake-bitten is no more.'

"I feel sure that the causes which have hitherto prevented vaccination from becoming a universal practice in this country consist chiefly in the apathy and want of foresight of the people, and the absence of a system providing facilities for procuring vaccination. I can confidently say that no reasons of a more serious nature exist in this country against compulsory vaccination, and those to which I have referred are insignificant, and can without difficulty be removed by legislation.

"My Lord, I would not have ventured to suggest an Act such as the one I ask the Council's leave to introduce if I did not feel sure that, whilst its objects are humane, they will also be properly understood by the people of India. In the figurative language of the East, small-pox is called the inevitable bridge which every child has to cross before entering into life; and recovery from the disease is considered second birth. The most anxious moments of the Native parent's care are bestowed on the child suffering from the malady, and the most earnest prayers are offered for the safety of the child. Other diseases are looked upon as accidental; but small-pox is regarded, as indeed it is, almost universal. It touches the keenest of human susceptibilities; for there are thousands in this country who, though spared by it from death, still have traces of its violence in the deep marks on the face or the loss of an eye. A law having for its object the security of the

future generations of India from a calamity so universal and severe would, if properly put into operation, far from being unpopular, be welcomed by the people of this country."

His Honour THE LIEUTENANT-GOVERNOR said that the Bill which it was proposed to introduce and which was referred to in the list of business was not before the Council. He was therefore unable to offer any opinion as to how far the provisions of it would be suitable, or otherwise, for the Panjáb. But, inasmuch as the Hon'ble Member had referred to the Panjáb as a place where vaccination ought, in his opinion, to be made compulsory, and had adduced the opinions of influential inhabitants of the province in support of applying the provisions of the Bill to the Panjáb, he wished to say that the Government of the Panjáb had always kept in view the desirability of introducing vaccination as largely as possible in the province, and had fully recognized its benefits; and it was entirely on that account, and from his desire that the benefits of vaccination should be extended and should not be checked, that he demurred to making such a provision as he understood the Act to contemplate, namely, that vaccination should be made compulsory. He believed that a measure of this kind, however carefully guarded, would have an effect directly the reverse of what it was intended to produce. Gradually, year by year, the prejudices of the people regarding vaccination had been lessened. Every care was taken in carrying out vaccination to enlist their sympathies and their intelligence in carrying on the operation, and for this reason, no doubt, the practice was meeting with less opposition than it met with at first. He felt certain, however, that to make it compulsory would at once raise a large amount of opposition, and it was solely on account of this opinion that he was averse to compulsory vaccination being introduced into the Panjáb. The province was one which had been comparatively recently annexed to British India; and, although we had made considerable progress in civilizing the people and advancing their condition, yet he thought it would be a mistake, while vaccination was making the progress which it now did, to render it compulsory in any part of the province.

The Hon'ble MR. COLVIN said that, with reference to the speech of His Honour the Lieutenant-Governor, the Hon'ble SAYYAD AHMAD begged that the motion standing in his name, which had just been put to the Council, might be altered as follows :—"The Hon'ble SAYYAD AHMAD KHÁN to move for leave to introduce a Bill for enabling Local Governments to prohibit the practice of inoculation and to make the vaccination of children in certain Municipalities and Cantonments compulsory."

The Hon'ble SIR ALEXANDER ARBUTHNOT said that he intended to make one remark with reference to the Bill, but he had proposed to defer making it until

the Bill was actually introduced, having observed from the notice paper that the Hon'ble Member was about to introduce the Bill at the present meeting. He had seen a copy of the Bill which was sent to the Executive Department of the Government the business of which was under his immediate charge, and while it was passing through that Department a suggestion had been made by the Sanitary Commissioner with the Government of India, which suggestion, like every suggestion on sanitary matters emanating from Dr. Cuningham, appeared to him to be deserving of the careful consideration of the Council. Before he proceeded to notice that suggestion, he would say a few words with reference to the observations made by the Hon'ble Member who had moved for leave to introduce the Bill and by his hon'ble colleague the Lieutenant-Governor of the Panjáb. He gathered from the remarks of the Hon'ble Member in charge of the Bill that he considered that, throughout the greater part of India, vaccination might at once be made generally compulsory; but he observed that in the Bill which the Hon'ble Member had framed, he had for the present confined its application to municipalities and cantonments, in fact, to the large towns in the several provinces to which it was proposed to apply it. He thought that in making this limitation the Hon'ble Member had acted wisely. We had just heard from His Honour the Lieutenant-Governor that, in his opinion, any sort of compulsion would be out of place in the province of which he was the Governor. Speaking of the Presidency with which he had been connected during the greater part of his Indian life, he thought he might say that the opinions of the intelligent members of the Native community throughout the Madras Presidency were entirely in accordance with the opinions which had been expressed by their hon'ble colleague Sayyad Ahmad. Not very long before he left Madras—some seven years ago—the question of making vaccination compulsory in municipalities was strongly pressed upon his attention by one of the ablest Native officials in the Madras Presidency, indeed, he might say one of the ablest officials in India. That gentleman assured him that the importance of the measure was widely and increasingly recognized, and that, while he was not prepared to advocate the extension of such a measure at that moment in the villages throughout the country, he thought that in large towns it would be perfectly safe and wise to introduce it.

The suggestion which Dr. Cuningham had made was in the direction of further limiting the application of the Bill, in fact, of making its application still more tentative. He advised that, before the Bill was put in force in any municipality, an application requiring it to be put in force should emanate from the Municipal Body, in which, as the Council were aware, there was invariably a considerable proportion of Native members.

It appeared to him that this was a wise and safe suggestion for dealing, as the proposed Bill did, with prejudices which, certainly up to a recent date,

were very deeply rooted, which were of long standing and which had only of late begun to give way to the force of enlightened opinion; and he thought it was very desirable that, as far as possible, we should carry the people with us, and that, at all events, we should carry with us the opinions of their more enlightened representatives.

He hoped, therefore, that, if the Bill was introduced and referred to a Select Committee, this question of limiting the operation of the Bill, for a time at all events, in the manner suggested by the Sanitary Commissioner, would receive the careful consideration of the Committee.

The Hon'ble MR. COLVIN said that he wished to make a few remarks with reference to the observations which had fallen from his hon'ble friend the Lieutenant-Governor of the Panjáb. Like His Honour he had not yet seen the Bill which it was now proposed to introduce; but he understood from the notice relating to it in the list of business which was upon the table that the measure was only intended to apply to certain municipalities and cantonments. He had gathered also from the remarks which had been made by his hon'ble friend the promoter of the Bill that it was only meant to be applicable to those parts of India which possess no local legislatures, and that its operation would only be extended to any town or cantonment where the Local Government, or in the case of cantonments situated in Native States, where the Government of India, was satisfied that it could properly be so extended.

MR. COLVIN understood, therefore, that the Bill was only a permissive Bill. It would not apply at all to those provinces which had legislatures of their own. In the rest of India it would only take effect where the Local Government in its discretion thought fit to introduce it. And in no case could it have any operation beyond certain limited areas. If it had been proposed to make vaccination generally compulsory throughout any province of British India, he for one would have regarded the measure as one of the most doubtful expediency, and he had no doubt that this opinion would have been entertained by many others. Looking at the Bill, however, as a purely permissive measure, of which no Local Government need make any use unless it pleased, he saw no objection to it, and he thought that possibly this consideration might also remove the objections of his hon'ble friend the Lieutenant-Governor.

The Hon'ble SAYYAD AHMAD KHÁN stated that, if leave was given to introduce the Bill, the suggestion made by Dr. Cuningham would be one which would properly be considered in the Select Committee to which he would propose to refer the Bill,

The Motion as amended by the Hon'ble Mover was then put and agreed to.

The Hon'ble SAYYAD AHMAD KHÁN then introduced the Bill.

The Council adjourned to Tuesday, the 14th October, 1879.

SIMLA;
The 30th September, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting, which was originally fixed for Thursday, the 25th September, 1879, was adjourned to Tuesday, the 30th September, 1879.

Govt C. B. Press, Simla.—No. 500, L. D —9-10-79.—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th October, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Ali Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

DEKKHAN AGRICULTURISTS RELIEF BILL.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill for the relief of Indebted Agriculturists in certain parts of the Dekkhan.

FACTORIES BILL.

The Hon'ble MR. COLVIN moved for leave to introduce a Bill to regulate labour in factories. He said that he thought it would not be necessary, at the present stage of the Bill, to detain the Council long. He merely wished to-day to state very briefly the circumstances which had shown that legislation on the subject was desirable, and to explain the scope of the measure which was in contemplation.

Attention had first been drawn to the question of factory labour in India by certain remarks which were made a few years ago in a report on the administration of the Cotton Department in Bombay. It was said in that report that the poorer classes derived great benefit from the mills, but that the advan-

tage carried with it a corresponding and serious disadvantage. The hours of labour, it was observed, were not limited by any Government regulation; the working day was undoubtedly long; the nature of the work was fatiguing; whilst women and children were largely employed, and generally, without any periodically recurring day for rest like Sunday. It was pointed out that the physical wear and tear of the employed must therefore be considerable, and that it was useless to expect that greater consideration would be shown to the female and juvenile hands by the mill-owner, husband or parent in this country than had been exhibited by and towards the same classes at home. Those remarks had attracted attention, and had led to a correspondence the result of which had been the appointment of a Commission by the Bombay Government with instructions to investigate and report upon the subject. It appeared from the report made to the Government of Bombay by that Committee that the witnesses whom it examined were divided as to the necessity of legislation; but, on the whole, they might be considered to have given their evidence in favour of a simple and plain enactment dealing fairly with the subject and not entering into too much detail. The members of the Commission themselves were not unanimous in their recommendations; but the official members and medical officers advised the enactment of a simple law regulating the hours of employment of children and requiring that machinery should be properly fenced They were further of opinion that the Act should be passed by the Government of India, and should be applied to the whole of British India.

Upon receipt of the report of this Commission further inquiry had been made from all Local Governments in order to ascertain whether the precautions which had been recommended for Bombay were necessary elsewhere. The result of the inquiry so made was generally creditable to the humanity and public spirit of the mill-owners and managers. The evidence went to show that the factory people were, as a body, in many respects quite as well, if not better, off than most persons of the same position in life who were not employed in factories. It was clear, however, that as regarded the employment of children and the protection of machinery there was room for abuses; that these in some places already existed, and that there was good reason to apprehend their increase with increased competition. It was shown also that Bombay was not the only province in which legislation was required, and that the evils described were making their appearance under other Governments. A good case, therefore, was shown to exist for the enactment of a regulating measure. The most convenient form for such a measure seemed to be that of a single uniform law, not extending to the whole of India, but applicable to any part of it, when needed. No good object would be gained by extending it at once to the whole of the country. Many provinces had no factories at all within the meaning of the Act, and nothing but trouble would be caused

by encumbering their Statute-books with an unnecessary Act. The ends in view could be sufficiently attained if the Bill were framed as a permissive measure, which could be put in force by Local Governments when occasion arose; and this, accordingly, was the form that would be given to the Bill which he desired to introduce.

As regarded the scope of the Bill, its provisions would be limited strictly to those points for which legislation had been shown to be necessary. It was most important that nothing should be done which could check the development of manufacturing industries in India. From every point of view it was desirable that this field for capital and labour should be developed and extended to the utmost, and especially because it helped to relieve the pressure of the agricultural population upon the land. The great body of the people in India had now no employment but that of agriculture; and the result was that in many parts it was becoming daily more difficult for all of them to obtain a livelihood from the soil. The obvious dangers of this overcrowding had been brought into special notice during the famines that had lately afflicted such large parts of India. The Bill, therefore, which he wished to introduce would be carefully framed, so as to offer no obstacle to the free growth of manufacturing industries. It contemplated no interference with the due freedom of employers and employed. They would be left at liberty to make any arrangements which they might think most conducive to their own interests. It would provide only for the two objects of affording security to life and limb from accident, and of protecting children and young persons who had not attained to an age at which they would be considered free agents from being overtasked. It was not proposed to introduce into the Bill any of the other points for which legislation had been found necessary at home. The differences between England and India of climate, character and habits of life of the people were so great that much which was needed there would not only be inapplicable but perhaps actually injurious here. The two points, however, which he had specified plainly formed part of the duty of protection which was imposed upon every Government, and he did not think that any reasonable objection could be offered to legislation for such a purpose.

The Bill would contain nothing further except certain provisions enabling Local Governments to arrange for the inspection of factories and to compel the owners or managers of factories to report accidents when they occurred. Without these powers, the two principal objects of the Bill which he was advocating could not be attained.

He had now explained the necessity of legislation and the scope of the proposed Bill. He would not detain the Council longer by referring to

matters of detail. These could be better dealt with at a later stage, if permission to introduce the Bill should be given on the present occasion.

The Hon'ble MR. HOPE said that the subject on which it was proposed to legislate was an extremely important one. It was one in which he took a great interest, and which, owing to the presence of factories not merely in Bombay but in districts of which he had had charge for a considerable number of years, he had had no small opportunities of studying. The policy of interfering with the manufacturing industries in India was one which appeared open to considerable question. At the same time he could not but reserve any actual formation of opinion upon the contemplated measure until he had had an opportunity of seeing it. He would only now say that he trusted that full information would be placed at the disposal of Members of Council as to the grounds upon which it had been considered desirable to legislate.

The Motion was put and agreed to.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. STOKES presented the final Report of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865.

The Council adjourned to Friday, the 24th October, 1879.

SIMLA;
The 17th October, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

NOTE.—The meeting which was originally fixed for Tuesday, the 14th October, 1879, was postponed to Friday, the 17th October, 1879.

Govt. C. B. Press, Simla,—No. 551, L. D.—28-10-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 24th October, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Mumtáz-ud-Daulah Nawáb Sir Muhammad Faiz Alí Khán Bahádur, K.C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill for the relief of Indebted Agriculturists in certain parts of the Dekkhan be taken into consideration. He said:—

"My Lord, in making this motion it seems convenient to mention that, while the Bill is being considered, I propose to confine my remarks to the subjects of the several amendments which my deference for the views of the Local Government, no less than my personal convictions, oblige me to move in opposition to certain decisions of the Select Committee, passed by a majority which, but for the absence through illness of the Hon'ble Sir John Strachey, would have been a narrow one. I shall reserve until my motion that the Bill be passed various explanations and comments of, I hope, an uncontentious character, which may perhaps contribute to a better understanding of the measure by those who will have to work it and by the public."

The Motion was put and agreed to.

The Hon'ble Mr. Hope then moved that in section 10 of the Bill the following words be omitted (namely): "except suits of the description mentioned in section three, clauses (*y*) and (*z*)." He said:—

"My Lord, in explanation of this motion, I may remind the Council that paragraph 33 of the Secretary of State's despatch of the 26th December last contains these words: 'I am inclined to think that the principle of summary jurisdiction without appeal might be conferred experimentally on all Civil Judges in the Dekkhan with great benefit.' In consequence of this suggestion, the draft Bill submitted by the Bombay Government provided that, within certain pecuniary limits, there should be no appeal from the decisions of the Subordinate Courts in cases, including those relating to mortgages, in which agriculturists were concerned, but that the proceedings of the Courts in such cases should be subject to inspection and revision by special officers under the District Judge. The Government of India in its executive capacity, after carefully considering whether the exclusion of mortgage-cases from appeal was desirable, allowed the Bill to be brought into this Council with the exclusion maintained, but substituted, as a further safeguard, the control of one Special Judge for that of the District Judges of the four districts. At the same time, in a letter dated July 26th, calling for the opinions of the Local Government, the High Court and local officers on the Bill generally, it invited attention to the question as still an open one. The reply of the Bombay Government on it was as follows:—

"'His Excellency in Council is of opinion that no alteration should be made in the Bill as it now stands. He considers that, though in some instances advantage may follow on the hearing of a case by an Appellate Court, yet advantage is not likely to result in so large a number of cases as to outweigh the disadvantage of allowing an appeal in all cases; that no distinction need be recognized between appeals in mortgage-cases and appeals in simple money claims; and that, where errors have to be corrected, relief can be afforded on a petition for revision as well as on a regular appeal.'

"The opinion of Mr. Justice Maxwell Melvill on the same point, concurred in by the four other Judges of the Bombay High Court who minuted on the reference, runs thus:—

"'I think that, if the Subordinate Judges and Special Judge be well selected, the system of revision will be an adequate substitute for the present system of appeals. We have had a long experience of the system of revision in the High Court. In cases in which no appeal lies applications for the exercise of our extraordinary jurisdiction are very frequent; and, though we are of course more strict in admitting such applications than we should be in admitting appeals, I do not think that any case of special hardship or injustice ever goes unredressed, or at least without an effort to redress it. Probably, in practice, there will not, under the system proposed in the Bill, be any great difference between the procedure in revision and in appeal. That is to say, every party aggrieved by a decision of a Subordinate Judge will apply to the Special Judge to revise the decision; and if the Special Judge does his duty, he will call for the

proceedings in every case in which he thinks that injustice may have worked. The system of revision seems certainly most in accordance with the general spirit of the Bill, which is to leave everything as much as possible to the discretion of the Judges. I see no practical advantage, if appeals be allowed, in limiting the right of appeal to mortgage-suits.'

"Notwithstanding this concurrence in opinion of the Local Government and five Judges of the local High Court in favour of the Bill as it stood, the Select Committee, by a majority which, but for the reason I have named, would have been a narrow one, have decided to allow appeals under the ordinary law in these mortgage-cases, and to put in the place of section 73 of the Bill as introduced a new section (10) in the Bill now presented, containing the words which I have just read in my motion. As the matter is one of primary importance, likely vitally to affect the success of the whole measure, I feel bound, as I have said, by my own convictions no less than by the obvious propriety of affording full hearing for the views of the Local Government, to request the Council to reverse this decision.

"I will now endeavour to summarize the case. Against the appeal system the following objections are urged :—

"*First*, that it is a tedious process. This is sufficiently notorious; but, as actual proof is forthcoming, I may mention that the Bombay returns of civil justice for the last five years show the average percentage of appeals pending at the end of the year to be 36 per cent., with a maximum of 44 per cent. Again, the proportion of those so pending which had lasted above four months is 57·6 per cent., with a maximum of 66 per cent. How long above four months some of them had gone on, the present forms of return do not show; but by going back to 1872 we learn that, of the 3,191 appeals pending at the end of that year, 615, or about one-fifth, were two years old, 183 were three years old, while 31 were in the fourth, 8 in the fifth, and 5 in the *sixth*, year of their existence! No wonder that sometimes, as stated in an able report on the judicial administration of Khándesh in 1875, written by the Assistant Judge, Mr. Batty, 'after all the worry and expense of a suit, followed by long-delayed decision in appeal, the judgment-creditor finds he has nothing to attach.' To expose the various causes of these delays is perhaps unnecessary; but one important cause may be mentioned, that appeal may be a double process, first to the District Court, and then on to the High Court. About 13 per cent. of the appeals hitherto heard in a year have been such 'second' appeals; and I fear the proportion will be increased by the lately passed amendment of the Civil Procedure Code.

"*Secondly*, appeal is an expensive process. This is obvious, as the parties have to operate at the District or High Court, far from their homes, and where pleaders of a higher class are indispensable. The mere recognized costs of

appeals, such as stamps, process fees, subsistence to witnesses, pleaders' fees, &c., are recorded in 1872 as 13·6 per cent. on the value. The real costs were of course much more, especially for pleaders, who, we are told in the papers before the Council, always exact higher fees than the rate authorized by law.

"*Thirdly*, appeal is a specially uncertain process. Where one Appellate Court sits in appeal upon another, the uncertainty is aggravated; and where this is not so, the natural and proper reluctance of an Appellate Court to interfere with findings on questions of fact, passed in full view of the demeanour of parties and witnesses and in the hearing of the local public, imparts a fictitious and undeserved importance to issues and refinements of law and procedure, upon which opinions may differ greatly. Hence an appeal is too often a gambling or speculative transaction, resulting in the denial of the substantial justice awarded by the Court below. Where, as sometimes happens, the Appellate Court is fond of reappreciating the evidence and meddling with facts, the uncertainty is of course greater still.

"*Fourthly*, appeal is an unsuitable mode of redress; that is, it on the whole suits those least who most need help. As I said in my speech on July 18th, 'the cases which come up in appeal are often not those which deserve to come. Many a man who has a good case cannot afford to appeal; many a man with money needlessly drags his opponent through all the Appellate Courts.' To appreciate the full meaning of this, it must be remembered that appeals lie not merely on the final decision, but on a whole string, lately much lengthened, of intermediate orders of one kind or another. Appeal, in short, is a luxury within the reach of monied litigants only.

"*Lastly*, the process is one of small general application. In 1877 the proportion of appeals to cases disposed of in the whole Bombay Presidency was just 3 per cent. In the four disturbed districts it reached 3½ per cent. in 1876, but fell to 2½ in 1878. But these are appeals in suits of all kinds. If we exclude those as to title, &c., which are known to be numerous, what will be the proportion applicable to our Bill? Yet we are asked by some to believe that by this insignificant check our Courts are kept braced up to high efficiency, and that on its withdrawal they will subside into models of superficiality, incapacity, laziness, precipitation, favouritism, corruption, and I know not what other theoretical attributes of irresponsible power. Nay rather, the truth more probably is that though now, under the existing appeal system, work is so done as to command our confidence, 68 per cent. of decisions appealed against being confirmed, still, as stated by the Bombay Legal Remembrancer, 'Subordinate Judges are left too much to themselves; their work is never sufficiently overhauled and scrutinized; their errors and shortcomings are not pointed out to them,' &c.

"The remarks just made have reference to the appeal system in general. But the majority in the Select Committee only propose that it shall be applied to 'mortgage-cases.' To this I would object that there is no real reason for making a distinction between these cases and others. The theory is that a mortgage-case is something to look very grave about; that it sometimes involves the investigation of difficult questions as to title, priorities, marshalling securities, contribution and rights of maintenance, and always involves the taking of complicated accounts. But the fact is that a mortgage-case, like most other cases, may be easy or may be difficult. Each one of the points named, title, priorities, &c., may present no special feature, and be promptly and safely settled on well-known rules. Questions of title, and curious ones too, sometimes arise about moveable property; and that litigation on them is not inconsiderable may be seen from the statistics of suits arising out of execution of decrees. As to accounts, it may be safely affirmed that they will be found, on an average, to be more complicated in money-suits than in mortgage-suits. An account on a simple money debt, to liquidate which grain, bullocks, cash, personal service, &c., have to be brought to credit under section 13 (*f*) of the Bill, may be complicated indeed. A mortgage account, on the other hand, judging from very full statistics of the mortgages of different kinds customary in the districts of Puna, Násik, Ahmadnagar, Sholapur and Kaládgi, which I lately obtained from the Hon'ble Colonel Anderson, Survey Commissioner for Bombay, must usually contain very simple items, even where an agreement to set off profits in lieu of interest has been set aside. This conclusion, that there is no reason for making any distinction as to appeals between mortgage-cases and other cases, is that which we find given in the papers before us by authorities undoubtedly the best acquainted with the subject. The Judge of Ahmadnagar says that experience shows that any nominal classification of suit is fallacious as a test of intricacy; and Mr. Justice Maxwell Melvill, with whom his four colleagues concur, says he sees no practical advantage, if appeals are allowed, in limiting them to mortgage-suits.

"I must now say a few words about revision. It appears to be in a very great measure free from the evils which I attribute to the appeal system. As the Special Judge and his two assistants will be moving about their charges for nearly two-thirds of the year, parties will be able to come freely before them at the time most convenient to themselves, while cases which they take up *proprio motu* will of course be chiefly taken up at once on the spot, after perusal of the record. The saving to parties in time, trouble and expense is obvious; the long purse will have less advantage over the short one, and the temptations to technicality will be diminished. But, above all, the percentage of cases which will come under scrutiny—scrutiny of a direct, personal and searching character—will certainly be ten times as large as under the appeal

system, and probably more. That Judges who have one-third of their whole work looked into on the spot by picked officers having nothing else to do will not be more careful in it than Judges who have only one-thirtieth, and that of a tolerably defined special class, brought by haphazard before a distant authority, I am wholly unable to believe.

"Against the substitution of revision for appeal what little has been hitherto advanced has mostly been met. But I must invite attention to the utterly insufficient grounds on which the majority of the Select Committee, in paragraph 24 of the report, attempt to justify the conclusion in favour of appeals at which they have arrived. They merely observe that the question whether appeals should be allowed in any cases, or whether we should trust entirely to the powers of superintendence and revision,

'is not so important as might at first sight appear, inasmuch as there can be little doubt that, if the right of appeal were withheld, petitions for revision would take the place of petitions of appeal; and then the chief difference would be that an application for revision not being, like the presentation of an appeal, a matter of right, might be more summarily dealt with by the superior Court.'

Here the whole of the objections to the appeal system, as also the far wider controlling influence of the revision system, are simply ignored; and it is assumed that selected officers of the judicial department will take advantage of the almost imperceptible difference of status between appellants and petitioners for revision in order to deal 'summarily'; that is, I suppose, to leave, as Mr. Justice Melvill puts it, cases of special hardship to go unredressed or without an effort to redress them. Such reasons are a virtual surrender of the case.

"In conclusion, I would beg the Council to bear in mind that the revision system secures whatever advantages the appeal system possesses, but removes the disadvantages which that system involves, and has a far wider beneficial influence; that the abolition of appeals, even without the revision safeguard, is thought desirable by the Secretary of State; that there is no real difference between mortgage-cases and other cases, as far as this question is concerned; that the exclusion of appeals in mortgage-cases is emphatically advocated by the Local Government; and finally, that the five Judges of the High Court have reported officially that revision is an adequate substitute for appeal. In view of these facts, I cannot doubt that the Council will decide favourably on the motion I have brought forward."

The Hon'ble Mr. THORNTON said:—"I take the opportunity of the consideration of the first of Mr. Hope's amendments to explain the general principle ı will regulate my votes this day. The measure we have to consider is, it rs to me, to all intents and purposes a local one, and, but for certain ical objections, might have been dealt with by the local legislature of

Bombay. This consideration should, I think, induce the Council to accord special respect to the views and wishes of the Local Government. But, apart from this, I look upon this measure as an honest and earnest attempt by the Bombay Government to meet and grapple with a local andexceptional difficulty; and I think, therefore, that their proposals should, wherever possible, receive the cordial support of the Members of this Council, even though some of them may not be in strict accordance with our views of what is best.

"I have said that the difficulty to be grappled with is local and exceptional. I say 'local,' because I desire to protest against the notion, which has obtained some currency, that the condition of the Dekkhan raiyat is to be considered as typical of the condition of the peasantry in all parts of India. At any rate, I can assert that it is not typical of the condition of the people of the province over which my hon'ble friend Sir Robert Egerton presides.

"I say also that the difficulty is an exceptional one; for, although some of the causes which have contributed to the depressed condition of the Dekkhan raiyat—such as the burden of ancestral debt, the *crassa ignorantia* of the kunbí, the absence of a law of bankruptcy or provision for winding-up the estates of deceased persons, the rigid system of collecting the full land-revenue in good and bad seasons alike, the distance of Courts of justice from the homes of the people—were certainly not to be ignored, yet I venture to think the *causa causans* (to borrow an expression from the old logicians) was a sudden and enormous inflation of credit during the American civil war, followed by a terrible contraction of credit. Such an event would bring about in England that state of things known technically as a commercial crisis. It would more or less ruin and demoralize any peasant proprietary in the world, and how much more a simple-minded peasant proprietary in India, where, by laws or custom or from a creditable sense of family honour, it is usual for the son to take upon himself the personal liabilities of his deceased father, even though he may have received no assets from the estate.

"Truly, my Lord, after considering the report of the Dekkhan Riots Commission, my ground of astonishment is, not that 66 per cent. of the Dekkhan raiyats should be insolvent, but that 33 per cent. should be in a position to pay their debts!

"But whatever may be the causes of the situation, there it is, and it *must* be dealt with vigorously thoroughly and practically; and in so dealing with the situation, I, for one, am prepared to sacrifice a large amount of theory.

"Keeping, then, the above principle in view, I proceed to the consideration of the first amendment—that is to say, the amendment which provides that *all*

cases, including mortgage-cases, coming before the small-debt courts shall not be liable to appeal. The statistics relating to appeals in the Bombay Presidency which have just been read to us by the Hon'ble Mr. Hope are certainly not encouraging. But I venture to hope that the facts he has quoted, and the deductions he has drawn, are not applicable to other provinces in India; they are most certainly not applicable to the province with which I am connected.

"Our experience in the Panjáb is that the right of appeal is greatly valued by the people, and it would also appear that the right, though freely used, is not abused; for, although in the Panjáb justice is comparatively accessible,—there being, as a rule, a Court of justice within an easy day's walk of a peasant's home—as many as 82 per cent. of appealable cases are unappealed."

His Excellency THE PRESIDENT:—"Does the Hon'ble Member mean that in 82 per cent. of the cases in which an appeal lies the decisions are unappealed?"

The Hon'ble MR. THORNTON:—"Yes, my Lord. What I am seeking to show is that, though the right of appeal exists, and is highly valued, and can be easily enforced, it is not abused in the Panjáb.

"But, although our experience of the working of an appellate system is not similar to that of Mr. Hope in the Bombay Presidency, yet, as the Local Government of that Presidency considers that the regular appellate system is objectionable in the case of the smaller class of suits by money-lenders, including mortgage-suits, and prefers to substitute and pay for a somewhat costly system of revision, control and superintendence, which is to all intents and purposes an easy, though somewhat uncertain, system of appeal, I am certainly not prepared to vote against the Hon'ble Member's amendment on this point."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have very few words to say upon this amendment. I consider the Bill, as my hon'ble friend Mr. Thornton has remarked, to be a local one, and that it is for technical reasons alone that it comes before this Council. Holding this view, I think that the utmost deference should be paid to the wishes of the Local Government in regard to the details of the measure. The whole chapter in which the section which it is proposed to amend occurs sets aside many of the existing provisions of the Code of Civil Procedure; and I can see no reason why the appeal, for which revision is substituted in regard to the other classes of cases specified in section 3, should be allowed in mortgage-cases only. I consider that the same procedure should be adopted for all the classes of suits specified, as the Bombay Government desire. In their letter on the case they state distinctly that they do not wish any appeals to be allowed in mortgage or other cases; and it seems to me desirable to follow their wishes."

The Hon'ble MR. RIVERS THOMPSON said:—"As a member of the Select Committee which very carefully went through all the details of this Bill, and unfortunately a member who was in a minority on this point, I do not like allowing it to pass with a silent vote. The question before the Council, I would remind them, is not whether there should be no supervision at all as regards the proceedings of Courts in any class of cases, but the simple one whether, in dealing with disputes connected with mortgage-suits, the principle to be adopted should be one of appeal from the Subordinate Judge to a superior Court or one of revision by a Special Judge. Now I trust I shall not be out of order if I remark that, with regard to this particular question about appeals, it depends very much upon whether the next amendment which the Hon'ble Member for Bombay will move—that is, with regard to section 54—will be carried or not. It seems to me that the two sections hang or fall together. If, as the Bill now stands, the Special Judge is excluded, I am prepared to say that some system of appeal ought rightly to be admitted with regard to this particular class of case; but if it is a question whether there shall be appeals, or whether this particular class of cases shall come under the revision of a Special Judge, I am certainly in favour of the amendment proposed by the Hon'ble Member for Bombay, that the latter alternative should be adopted. I would call to the remembrance of the Council that, before even the Bill was introduced, there was a Committee of officers who considered very carefully the provisions of the measure, and it was at that time proposed, and adopted almost I believe with unanimity, that, considering the very exceptional and admittedly tentative character of this legislation, it would be very much better that a special officer should be appointed, not only for the duty of revising judicial decisions of inferior Courts, but for the general supervision of all proceedings under the Act.

"I myself fully accepted that proposal; and as the Bill was first drafted, it contained a provision for the appointment of a Special Judge. This arrangement secured, as I have said, the necessary special superintendence required for the work in the four districts to which the Bill was to apply; and that not only as regards any particular class of suits in Court, but for the whole general administration of the law. I still think that this is a necessity under the circumstances in which this measure is introduced into these four districts. They have suffered from long-standing troubles and difficulties arising from causes in a great measure beyond the control of the Government; and in the embittered relations which now exist between debtor and creditor special legislation has been resorted to for the removal of the evil. Now, when the question of appeals came before the Select Committee, while it was accepted, as a rule, that appeals should not be allowed in simple money claims, it was decided that they should be admitted for those two classes of cases that come under clauses (*y*) and (*z*) of section 3; and stress was laid by the majority of the

Committee on the fact that this class of cases was a very difficult one, and that in consequence of that difficulty Appellate Courts must be provided for securing that no injustice takes place in such litigation. I agree with Mr. Hope in thinking that, considering the class of people for whom we are legislating, and the amount for which the money-value of appeals is fixed in the measure, these mortgage-cases will probably not present greater difficulties than the general class of cases which will come under its provisions; and I am also inclined to say that, whatever these difficulties may be, they will much more advantageously be met by an officer fully vested with the powers of revision, specially selected and reserved for the consideration of these cases, than by the ordinary procedure in civil suits. It seems to me that if a system of appeals is to be allowed, and such appeals are to lie to four different Judges, holding their courts at different places, at long distances from the homes of the people, the long delay that always arises in the disposal of appeals, and the technicalities of procedure that attend such a course, will be fatal to the success of the Act. I would also point to the fact that, as regards the objection taken as to the difficulties and intricacies of such suits, in section 12 of the Bill as it now stands special provisions are made to enable the Courts to go, as it is called, behind the bond; and that in mortgage-suits also it will be in the power of those Courts to analyze the whole history of the transaction. As the general scope and object of the whole measure is to bring the two parties together, and in their presence to try and get to the foundation and origin of the debt, and the whole proceedings connected with it, the Subordinate Judges will have ample power to go into the entire case, and to arrive at a fair decision upon its merits. With these observations, I have only to say that I shall support the Hon'ble Member in his amendment."

The Hon'ble SIR JOHN STRACHEY said :—"The Hon'ble Mr. Hope, in his opening speech, referred to the fact that, although I was a member of the Select Committee on this Bill, I had unfortunately been unable to attend the meetings of the Committee; otherwise I should certainly not only have expressed in the Committee views in accord with the present amendment, but also with the other amendments of which notice has been given. I should have agreed on every point with him and my hon'ble friend Mr. Thompson. I am strongly opposed to the alteration which the Select Committee has proposed to make in the Bill in regard to the question of appeal; and I think the change, if allowed to stand, will be a most unfortunate one. I do not for a moment deny that it is necessary in a great many cases of importance to allow suitors the right of appeal. Nevertheless, I believe it to be true that, among all the causes which have rendered the administration of justice in India slow, expensive and uncertain, the system of appeal has been one of the most serious and the most mischievous. I think it has been clearly shown

that nine-tenths of the cases in which it is now proposed to allow appeals will be of a most simple character, and that there is no more reason for allowing an appeal in them than there is for allowing in the other cases in which an appeal is forbidden by the Bill.

"It seems to me that far greater security for the correction of erroneous decisions, and for ensuring supervision of the Subordinate Courts by competent superior Judges, was afforded by the Bill as it stood before it was altered by the Select Committee.

"As my hon'ble friend Mr. Thompson has just said, the amendment now being considered and the second amendment which refers to the appointment of a Special Judge are closely connected with one another, and they must stand or fall together. As the Bill formerly stood, there was to be a Special Judge, who was to devote his whole time to examining the proceedings of the Subordinate Courts, and to revising their decisions whenever a failure of justice appeared to have taken place. It seems to me that every honest suitor considering himself aggrieved by the decision of the lower Court would have every opportunity under the system formerly proposed by the Bill of getting his case re-heard which he could have under the system of appeal. His petition would be called a 'petition for revision' instead of a 'petition of appeal'; but I cannot see that he would be deprived of any single advantage which under the system of appeal he would have. It seems to me that, taking the first and second of these amendments together, it is now proposed to abolish one of the very best and most essential parts of the Bill as it was introduced. It is proposed to substitute for the provisions under which we should have got security for the constant and personal superintendence by a competent officer over all the proceedings of the lower Courts the altogether illusory and imaginary security afforded by extending the power of appeal. The Bill as it originally stood in respect to this matter was, I believe, approved by the majority of this Council. It was strongly approved by the Local Government; and we know now that it was also approved by the five Judges of the Bombay High Court. Under these circumstances, my Lord, I shall vote for the amendment."

The Hon'ble Mr. Stokes said that the effect of the amendment would be to deprive the parties to all suits for foreclosure or redemption of the right of appeal which they now enjoyed, and to substitute for it a system of revision. On the expediency of providing an appeal in cases of this kind he had but little to add to what he had said when the Hon'ble Mr. Hope had introduced the Bill. He had then pointed out that, in the absence of an Appellate Court, the Judges of first instance would have no one to stand in awe of, and that the errors arising from corruption, incapacity, laziness, precipitation, ignorance and love of arbitrary

power would remain uncorrected, and cause hardship and discontent. These general remarks did not pretend to be original, but were founded on the writings of the great master in these matters *di color che sanno*—Bentham—and he had heard nothing here to-day, and did not expect to hear anything, that would lead to a different conclusion. But the matter seemed more complicated than he had supposed. It now appeared that these mortgage-suits were of such importance as to demand a special procedure, or, at all events, to be free from a summary procedure, not merely because of their difficulty, of which he would say a few words hereafter, but because they related to land, and because to the Native of India land was of abnormal importance. Having no manufactories, their livelihood depended solely on the cultivation of their fields; and for that reason, as well as for others—as he understood from persons better acquainted with the subject than he could pretend to be—they attached extraordinary value to the right of appeal in all questions relating to land. The question had, therefore, a political as well as a juristic aspect. Furthermore, the suits referred to in the amendment were mortgage-suits; and, as the Bill was now framed, the number of mortgage-suits would be enormously increased. As far as he could make out, with section 22 forbidding attachments or sales of immoveable property not specifically pledged, no saukár would ever lend money except on the security of land; and, unless the nature of such litigation was different in the Bombay Presidency from what it was elsewhere, no suits could be named in which difficult questions more often arose and which were, therefore, less adapted for a summary procedure. There was always a more or less complicated account to be taken; and questions as to title, priorities, marshalling securities and contribution were certain to arise in almost every case—that is, provided the Judge understood his business, and saw difficulties where they really existed. That Bombay litigation formed no exception to this rule appears from the able paper of Mr. Naylor, the Bombay Legal Remembrancer, who wrote :—

"Suits between mortgagors and mortgagees generally entail questions of considerable importance and difficulty; and, after having given the matter much consideration, I am unable to concur with those who think that when agriculturists are parties to such suits they should be tried summarily. The intricacy of a suit in no way depends upon the social status or occupation of the parties thereto. It is to the subject-matter of an action that we must look in order to judge whether it is likely to involve complicated issues; and those who are acquainted with the usual range of litigation will unhesitatingly affirm that questions relating to mortgage-claims are amongst those which are most prolific of knotty points and legal difficulties. It makes no difference in this respect whether the value of the matter in dispute be small or great, or whether the parties tothe suit belong to one class or another."

It was true that the Hon'ble Mover in his speech on introducing the Bill, and in reply to a question put by the Hon'ble Sir Alexander Arbuthnot, said that "mortgages are usually only difficult if they happen to

involve questions of priorities and the like, or there are several creditors. . . . . Under the Bombay revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner; *and so* questions of title are not likely to give trouble." MR. STOKES thought the Hon'ble Member in making the latter statement must have overlooked the fact that the Bombay High Court had decided more than once that the Collectors' books were kept for purposes of revenue, and not for purposes of title (10 Bom. 187); and that the fact that a person's name was so entered did not establish his title or defeat that of any other person (10 Bom. 187, 192). As to the disadvantages in civil cases of the system of revision as compared with the system of appeal, he rejoiced to find that the remarks which he had ventured to make upon this subject, drawn as they were from theoretical considerations rather than practical experience in the Mufassal, were now confirmed by three such men as Mr. Naylor, whom he had just quoted, Mr. Wedderburn, District Judge of Ahmadnagar, and Mr. Justice West.

Mr. Naylor at page 9 of his paper said :—

"The cases in which it would be justifiable to interfere with a decision of a civil matter, except upon the application of one or other of the parties, must be very few. If the Special Judge revises a decision upon the complaint of one of the parties, he will, in effect, hear an informal appeal. But he will do so subject to the following disadvantages over a regular system of appeal (namely) :—

(1) that there is no limit to the period within which applications for revision may be made or granted, and the parties can, therefore, never be certain that the decision they have obtained is final;

(2) that the application will generally have to be enquired into at a great distance from the homes of the parties, *i.e.*, wherever the Special Judge may happen to be on tour, and on no fixed date, and must, therefore, be disposed of without hearing the parties or anybody in their behalf;

(3) that the parties will have no absolute right to bring their cases before him, and that it will therefore be in his power to refuse applications without any inquiry at all.

"The right of appeal to a fixed Appellate Court within the district itself is, I think, a far preferable remedy to this; and in mortgage-cases it is most undesirable, not to say altogether inequitable, that the people should be deprived of it."

Mr. Naylor did not seem to be quite correct in saying that there was no limit to the period within which applications for revision might be made. The Limitation Act, XV of 1877, schedule II, No. 178, fixed a period of three years for this and other applications not expressly provided for. But for three years the parties would never be certain that the decision they had obtained was final; whereas now, when the periods prescribed for presenting appeals

under the Code of Civil Procedure (thirty days and ninety days) had lapsed, the decision might practically be regarded as final. As to the disadvantages respectively numbered (2) and (3) he (MR. STOKES) entirely agreed with Mr. Naylor.

Mr. Wedderburn in the fifth paragraph of his note also said :—

"With regard to the efficacy of revision as a substitute for appeal, it appears to me that this method of control is better suited for criminal than for civil business. By examining a criminal return, which gives an abstract of the incriminating circumstances, and states the section under which the accused has been convicted and the amount of the punishment, a superior Court can form an opinion as to the general propriety of the orders passed, and by sending for the record can effectually remedy a failure of justice. But the difficulty of carrying out such a duty would be very much greater in civil suits, where the issues are so much more complicated. And I think it would be difficult to devise a form of return which would, within moderate dimensions, supply to the Special Judge the information necessary to enable him to carry out the revision described in section 54 of the Bill. It must also be borne in mind that, unless such returns are framed in English,* most European officers would, in making use of them, have to rely on subordinate agency, which would, in great measure, defeat the purpose of the legislature in appointing a Special Judge to exercise a vigilant personal control. If, on the other hand, the Special Judge does not rely upon civil returns, but modifies the decisions of the Subordinate Judges upon the complaint of the parties, I do not see wherein this method will materially differ from a system of appeal. To disturb the decision of the lower Court on a mere inspection of the record would be a risky proceeding; and the party to whose detriment the alteration was made would consider himself highly aggrieved if he had no opportunity of being heard in support of the original decree."

* The Subordinate Judges in this district write their judgments mostly in Maráthí.

The Council would perhaps remember that when the Bill was introduced he (MR. STOKES) had suggested that the revising Judge would have neither time nor skill to decipher and translate the records kept, as they would be in a Native language, and that he would therefore have to rely upon some corruptible subordinate, such as the sarishtádár. He was glad to find this suggestion fully supported by the District Judge of Ahmadnagar. To the same effect was the remark made by Mr. Justice West in what he would take the liberty of calling one of the most interesting and statesmanlike papers ever laid before this Council. "The brief notes of evidence and of the judgment," says Mr. West, "will, it is supposed, be nearly always in English. *It is absolutely necessary that they should be, if there is to be any trustworthy scrutiny of them by the supervising officers.*"

But to return to the general question as to the relative advantages of a system of appeal and a system of revision, Mr. Justice West, in the paper he had just quoted, remarked :—

"The power of superintendence and revision is one which in discreet hands may be very usefully exercised; yet, according to my experience, it bears much more frequently upon matters

of form than of substance. If there has been any active departure from the prescribed rules of procedure, the papers recorded will usually indicate the error. Omissions to do this or that thing which ought to have been done are less readily betrayed by the record; and all signs of any total departure from justice or propriety will be carefully excluded from it. If a Subordinate Judge towards the close of a wearying case refuses to take the evidence of certain witnesses or to accept a well-grounded application for adjournment, there will, as a rule, be nothing on record to show this dereliction of duty. If he cuts short the examination of witnesses whose testimony is received, his notes or the substance of their statements will not afford any evidence of his impatience. A smooth and specious surface presented by the written proceedings is quite consistent with a defective, arbitrary and partial investigation in substance. The parties only, and the people who were present in Court, can say how far the record is an actual representation of what took place. It is the interest of the defeated litigant to point out all errors of the Judge through which, as he thinks, justice has been defeated. It is equally his interest not to indulge in misrepresentations, the discovery of which will cause distrust, and probably the dismissal of his appeal. It is thus, and thus only, that material failures of justice arising from indolence, impatience or caprice will, with any reasonable certainty, be brought to light. The record ought to be kept with such fulness and regularity that, except by a conspiracy between the Judge and his principal subordinates, it should by mere inspection of it afford a corroboration or refutation of most of the imputations which a disappointed suitor is apt, rightly or wrongly, to cast upon the Judge who has decided against him.

"It is true that the same disappointed suitor who, under the ordinary system, may make an appeal may, under the system of revision, present his complaints in the form of a petition for review. Some check on absolutely false statements will be imposed by a rule which shall exact a verification on oath of the matters of fact set forth in the application. But whether its assertions as to a defective examination of the witnesses or a perverted note of their statements are true or not cannot really be ascertained, in case of a denial, by means of the Judge's note, which is itself impugned. It is certain that many false or greatly exaggerated complaints will be made, and, under cover of these, a careless or hasty Judge will enjoy impunity in cases in which he has been really and seriously to blame."

He (MR. STOKES) felt it his duty to bring these remarks before the Council; for he had reason to believe that, owing to great press of work, they had not been read by some of the Hon'ble Members. They had, moreover, been made by men who had had very considerable experience in civil judicature—an advantage which, so far as he was aware, the Hon'ble Mover, however distinguished as a Collector and Magistrate, had not enjoyed. Mr. Justice West then proceeded to show that the system of revision would tend to cause deterioration of judicial work:—

Civil Procedure Code, sections 189 to 203.

"The brief notes of evidence and of the judgment will, it is supposed, be nearly always in English. It is absolutely necessary that they should be, if there is to be any trustworthy scrutiny of them by the supervising officer. But, for the purposes of publicity, of bringing the people in the Court and the Judge into effective and corrective relation, these notes might as well be written in Japanese or Hebrew. It is a rare thing for even one member of the assembly in a Subordinate Court to know English. The Subordinate Judge may take down

as much as he likes and in what terms he likes. The reasons he chooses to assign for his decision may be good, bad or indifferent, and no one in Court will be a bit the wiser. If theory and experience both are not entirely at fault, this substantial withdrawal of judicial work from the light of full publicity cannot but be attended with a rapid deterioration of its quality. Few human beings are fit for irresponsibility—Natives of India least of all. From a personal examination some years ago of a large number of unappealable cases disposed of by Subordinate Judges, I became satisfied that the inherent weakness of the Native character (or indeed of human character) showed itself as markedly in judicial proceedings as in any other work. The evidence I found was taken in a much more slovenly manner; the whole business of the Subordinate Judge was performed with far less care and precision than in the cases subject to appeal. And if this was so when the whole record was in the vernacular and open to effective discussion by every one about the Court, how much more may the same laxness be expected to prevail when everything is hidden away in an unknown tongue?"

It was said that the system of appeals led to inordinate delay and expense, to loss of time and to uncertainty, which checked exertion. He (MR. STOKES) had touched on this matter in the remarks which he made when the Bill was introduced, and was not going to repeat himself; but he would read what Mr. Justice West had written on this matter:—

"It is said, however, that this system of appeals leads to inordinate delay and expense, to loss of time and an uncertainty which checks exertion. The raiyat himself, however, does not, in fact, appeal in more than one in a hundred of the suits of small amount that are brought against him. In cases of larger amount, he belongs generally to a class needing no special protection. If he has no means, he may appeal without expense *in formâ pauperis*. If dissatisfied, he may again present his case free of cost to the High Court. His applications are rejected only if it appears that he is in the wrong. If his creditor appeals against an adverse decree, the necessary expense falls on that creditor, at least in the first instance. To be a respondent does not necessarily cost anything: a debtor successful in the Court of first instance is not even called on to appear in the Appellate Court, unless a good *primâ facie* cause appears for reversing the decree in his favour. If the decree was absolutely wrong, it will hardly be contended that it ought not to be set right. Such is the degree of uncertainty produced by the right of appeal; and this itself is controlled and restricted by the power of the High Court. It is not for a moment to be compared with the uncertainty in which people would live with respect to any possible claim that might be trumped up against them under the *régime* of ill-informed, poor and practically irresponsible Judges. The loss of time is as nothing to that which will be occasioned by the enforced double appearance in many cases before Conciliator and Judge, by the necessity of bringing forward unwilling gratis witnesses and getting a presentable statement of defence driven into a stolid brain by a pleader not allowed himself to plead.

"Considered as a means for ameliorating and elevating the condition of the peasantry, this scheme of imperfect investigation, defective record and casual supervision seems as unpromising as any that could be devised. It has not, I think, emanated, and could not have emanated, from any one really acquainted with the working of the Civil Courts in this country. It meets no actual or even fancied need of the people themselves. They do not complain of the Appellate Courts except as they complain of all Courts which enforce the payment of debts.

They have more confidence in the Court of higher than in that of lower rank, and, like the rest of mankind, they are pleased to think that an appeal lies open to them, even if they do not resort to it. What they really complain of about the Courts are the enormous fees, which it is not apparently proposed to reduce; the loss of time in attendance, which will be considerably increased; and the improvident sales of their property, which could as well be prevented under the existing organization as under that by which the legislature is asked to replace it. From 1880 onwards they will have in every case, or almost every case, to sell their farms outright, where now they would but contract a loan. When a suit is instituted, they will lose their patrimonies more rapidly and irrevocably than ever before. Such 'relief' will to some of their untutored minds be hardly distinguishable from a new form of oppression."

After all, on such a matter the only opinions likely to be of much practical value were those of men familiar with the working of the local Civil Courts: to such familiarity he (MR. STOKES) could not pretend; and with these remarks on appeal and revision, which he had studiously refrained from making on his own authority, he begged to state that he would oppose the motion.

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"My Lord, I intend to vote against the amendment. I had not intended to speak at any length on this question, and the few remarks I proposed to make have been for the most part anticipated by my hon'ble friend Mr. Stokes. But there is one point which has been dwelt on by some of the speakers in favour of the amendment regarding which I should like to say a word. My hon'ble friend Mr. Thornton in his interesting observations, and my hon'ble friend the Lieutenant-Governor and, if I remember right, Mr. Thompson also, dwelt on the importance of our giving the utmost possible support to the views of the Local Government in regard to what they described as an essentially local Bill. Now, my Lord, I quite agree with those Hon'ble Members that in this, as in all other matters affecting the local concerns of a particular presidency or province, we should pay the greatest and the most respectful attention to the views and opinions of the Local Government. But it appears to me that this principle may be carried too far. The Government of India exists, both in its executive and its legislative capacity, for the purpose of directing, controlling and laying down the principles upon which this country is to be administered, both executively and legislatively. It is very desirable that, as far as we possibly can, we should abstain from interference with the Local Administrations in matters of detail; but when we come to important questions of principle, when we come to proposals which are in contravention of the principles which have been laid down by the wisest administrators and legislators who have dealt with such matters, whether in our own country or in India, then I think the Government of India are bound to consider carefully whether it is not their duty to interpose. It appears to me that in this particular matter the supporters of the amendment moved by the Hon'ble Member are ignoring the wisdom and the opinions of the most eminent men who

have dealt with legislation not only in this country, but in Europe. My hon'ble friend Mr. Stokes quoted the opinion on this particular matter of the great founder of nearly all the law reforms which have taken place in England in the course of the present century—the opinion of Jeremy Bentham. It is often said that Jeremy Bentham was a man of the closet—that he was a pure theorist; but somehow or other there are very few of his theories which have not come to be copied, and that have not brought about the most beneficial results. The Mover of the amendment told us that the nominal classification of suits is fallacious as a test of intricacy. Now, it so happens that this particular test is the test which, during the last thirty or forty years, since Courts of small causes—Courts expressly framed for the purpose of exercising prompt and summary jurisdiction—were founded in England, and since those Courts have been established and extended in this country,—this, I say, has been the test which the wisest men among us, the most learned, the most thoughtful and the most practical of our predecessors have deemed it necessary and found it convenient to adopt. It appears to me that on our part it is not wise to ignore the lessons of experience, the teachings which have been handed down to us by men certainly not less eminent than those who are seated round this table. The Hon'ble Member who has moved the amendment has treated a despatch of the Secretary of State, which was the immediate origin of the preparation of the Bill now before us, as laying down that it was desirable that in regard to all suits in which the Dekkhan raiyats were concerned the right of appeal should be abolished. The despatch to which he has alluded is on some points, and certainly on this point, somewhat vague in its wording. But I must express my conviction that the framer of that despatch had no such intention as that which has been attributed to him. It seems to me that all that the Secretary of State intended was that the system of summary, or what we call small-cause, jurisdiction should be extended in these particular districts of the Dekkhan more than they have been generally extended in the Mufassal in this country. I do not for a moment believe that it was his design that in suits of the class of those which, not only throughout the Mufassal but in the Presidency-towns, it has been necessary to provide for and regulate under the ordinary rules of civil procedure, a new system should be introduced. My hon'ble friend Mr. Stokes, and the experienced officers from whose writings he has largely quoted, have, I think, sufficiently shown that the test which the wisdom of our predecessors, which the experience of the past, have pronounced to be adequate and sufficient is one which ought not to be departed from on the present occasion; and I think he might have added that, if the objections which have been advanced against the system of appeal by the Mover of the amendment and by his supporters in this Council are really valid objections, they apply to our whole system of judicature throughout India. If it be the fact that the evils which accompany that system are so great as they have been

described, then I say that those evils are just as applicable to Bengal, the Panjáb, the North-Western Provinces or Madras as they are to the Dekkhan districts of Bombay. It appears to me that in arguing in support of their contention my hon'ble colleagues have somewhat overstated their case.

"Then, as it appears to me, there is another objection to the amendment which has been moved with reference to the section now under discussion.

"I quite agree with Sir John Strachey and Mr. Thompson that the question of appeals and the question of a supervising Judge hang together. If a majority of this Council shall this morning decide that the right of appeal in these cases shall be abolished, and shall also decide, as I have no doubt in that case they will, that these suits shall be withdrawn from the cognizance of the established District Judges, and shall be brought under the supervision of a special officer, the result will be that the Subordinate Judges by whom the suits will be tried will be serving under two masters. The District Judges before whom appeals from all their decisions will lie in all cases other than those provided for in this Bill, not excluding cases above the value of Rs. 500 in which agriculturists are concerned, will be deprived of the opportunity of observing the working of the Judges subordinate to them in that which will form a very large portion of their jurisdiction. The Subordinate Judge will be receiving from one master that description of instruction which may be afforded by the exercise of the powers of revision; he will be receiving from another master the instruction which is afforded by the trial of appeals from his decisions. It seems to me that such a system will give rise to a great deal that is unsatisfactory in the practical working of our Courts, and will end in all sorts of complications. Sir John Strachey observed that the honest suitor under a system of revision would have every opportunity of having his appeal heard if he had a real grievance; but he omitted to remark that the application for revision might very often be preferred by dishonest suitors; and in such cases the system, it appears to me, will be open to all the objections which have been advanced against it by Mr. Naylor and by Mr. Justice West. 'Mr. Naylor points out,' as Mr. Stokes has told us, 'what a serious grievance it will be that these suits should be heard in the informal manner in which they may be heard under the Bill as it is proposed to amend it.' Taking the case which I have just suggested—the case of a dishonest suitor who prefers what will really be an appeal to the revising Judge—suppose the revising Judge does not think fit to call upon the opposite party to hear what he has got to say on the other side, then a grievous injustice may be committed. It appears to me that this is a point and an aspect of the question which ought not to be left entirely out of consideration.

"Lastly, I would remark that in depriving the people of these districts of the right of appeal in that class of cases in which it is now given in every

district throughout the country—a right which elsewhere it is proposed to maintain—we shall be depriving the people of the Dekkhan of what to them, as to other Natives of India, is a valued and cherished privilege."

His Excellency THE COMMANDER-IN-CHIEF said:—"I have no intention of saying a word on this Bill, as I believe I come more strictly under the category of those referred to by my hon'ble friend Mr. Stokes who have not read all the papers. But I have listened with great interest to my hon'ble friend Mr. Thornton's speech; and if anything is clearly stated by him, it is the immense value attached by the raiyats of the Panjáb to the privilege of appeal. I must say I was rather astonished at the conclusion arrived at by the Hon'ble Member and the vote which he proposes to give. I assure you that his speech has quite convinced me of the propriety of taking a directly opposite course to that which he himself has taken. I have not altogether omitted reading a portion of the papers concerned and the Bill itself; but it appears to me that, if the Bill is intended for any purpose at all, it is for the relief of the raiyat; and it seems to me a very strange method of relieving the raiyat that we should at the very first discussion that occurs on the Bill withdraw from him his most valued privilege. I have only to say, my Lord, in conclusion that I shall vote in opposition to the amendment."

The Hon'ble MR. HOPE said:—"My Lord, I trust that the Council will extend to me some sympathy in the difficult task which I am called upon to perform, at a moment's notice, of replying to two such long speeches as those we have just heard, adverse to my amendment, and which go into such an enormous number of petty details; and I must only ask it to accept my assurance, by way of covering any omissions which I may inadvertently make that there is not a single phrase, or a single allegation, used in either of these two speeches which is not capable of being effectively contradicted.

"In the first place, the Hon'ble the Law Member led off by saying that the objections which he put forward were not original. This I can well believe. He proceeded further to base them upon the authority of Bentham; and the Hon'ble Sir Alexander Arbuthnot also enlarged upon the same and other authority. We were told that we were committing a great crime in ignoring the wisdom of eminent men, who were considered to be the very first authorities not only in Europe but, in fact, throughout the world. Now, in the first place, I beg to deny the premises. We are not ignoring the authority of Bentham at all; and Bentham is simply a very great name, brought in under perhaps the erroneous impression that it would frighten or persuade somebody. The mention made of Bentham by the Hon'ble the Law Member in his speech on the 18th July was that, 'in the absence of an Appellate Court, the Judges of first instance will have no one (as Bentham says) to "stand in awe" of.' Well, the whole

point in this simple question is, whether the Courts will have any one to stand in awe of or not; and, therefore, all that we have got to do, in order to carry out to the full Bentham's theory, and to defer to his authority, is to take care that we keep a proper authority for Courts 'to stand in awe' of. Now, the argument in this matter, which I am glad to see neither of the Hon'ble Members has ventured to allude to, that the system of revision is much wider in its application than the system of appeal, effectively disposes of this question; for it stands to reason, except, perhaps, in the minds of persons of such very uncommon sense that I should be loth to recognize it as sense at all, that Courts which have 30 per cent. of their work carefully looked after by special officers are likely to stand a little more 'in awe' than Courts which have only 3 per cent. of their work looked after. Therefore, I entirely deny that we go against the authority of Bentham or any other of the great experiences which are held up to frighten us."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"I should like for a moment to interrupt the Hon'ble Member. I wish to remark that, if the Bill should be left as it is at present framed, there will still be a system of revision under Act XIV of 1869, which I believe is a Bombay Act."

The Hon'ble MR. HOPE:—"I am much obliged for the Hon'ble Member's interruption, which I will make a note of, and deal with in due course. Well, to continue regarding this matter of our old experiences, having answered with reference to Bentham, I may notice that it has been urged that we ought not to abandon a system which has stood a test thirty or forty years old, and that we should not cast aside the experience of the past. To that I reply, that the experience of the past is exactly what brings us to our present position; because the experience of the past has shown us that this system of appeal is *not* efficient, and that the system of non-appeal has been gradually coming round into favour, first of all in England, and now in India, where at last a little ray of light has come to us. In India even, in money cases, within the last thirty years appeals have been cut off in the Small Cause Courts; and in England the system had been much more largely extended. Therefore, the practical experiences of the past are entirely in favour of our measure.

"Next, we were told by the Hon'ble the Law Member that it was not only because mortgage-suits were difficult that he thought they should be subjected to appeal, but because they also related to land, and that land is a very important thing, and a thing to which the people of this country attach an extraordinary value. This is a change of ground from that previously taken up by the Hon'ble Member; but at the same time it is a perfectly fair and reasonable ground to occupy, and I have only to remark with regard to it that the observation seems to me to be totally irrelevant. Nobody ever said that the

people do not attach value to the land. The question here really is, whether the cases which relate to land will be a bit less carefully tried under the system proposed than under the system it is proposed to abolish."

The Hon'ble MR. STOKES:—"The point, I may remark, was that the people attached an extreme value to the right of appeal in suits relating to land."

The Hon'ble MR. HOPE:—"I am much obliged to the Hon'ble Member. Now, to come to the value which people attach to the right of appeal, I cannot but think that His Excellency the Commander-in-Chief—although no doubt he will pardon me if I am in error—may possibly have misunderstood, as I myself did at first, the manner in which the Hon'ble Mr. Thornton expressed his view regarding the appreciation of the people of the Panjáb of the system of appeal. He put it—if I correctly took it down—that of the cases which might be appealed against, 82 per cent. were not appealed against. That statement, inverted, means that the people only appeal in 18 per cent. out of all the cases."

His Excellency THE COMMANDER-IN-CHIEF:—"That is exactly the view I took of it, and it only shows the appreciation the raiyat has of his position in not making futile appeals; and I suppose the Dekkhan raiyat is as sensible a man as the Panjáb raiyat."

The Hon'ble MR. THORNTON:—"Perhaps I had better explain that what I wished to say was that, as a matter of experience, in which I think my hon'ble friend the Lieutenant-Governor concurs, the peasant of the Panjáb does, as a matter of fact, attach the greatest importance to the power of appeal, and also that he does not abuse that power. I therefore adverted to the statistics to which the Hon'ble Mr. Hope has referred."

His Excellency THE COMMANDER-IN-CHIEF wished it to be understood that he had fully and rightly comprehended the remarks of his hon'ble friend Mr. Thornton.

The Hon'ble MR. HOPE:—"I am glad to find that my surmise was incorrect; but, as I did not at first fully understand the matter through the way it was put, I thought there might have been a misapprehension. But with regard to this I have only to say that, greatly as I respect the knowledge my hon'ble friend Mr. Thornton possesses of the Panjáb, and fully prepared as I should ordinarily be to accept any inference which he might draw from it, I somewhat hesitate to infer from the simple fact that the people do not appeal in 82 of the cases in which they might do so that they abstain from appealing solely through moderation. I should require a great deal more proof than those

statistics afford before I should be inclined to admit that. But I do say that it appears to me that the large proportion of appeals may be very easily accounted for on one of the grounds which he assigns for it, namely, that the Courts are nearer to the homes of the people, which is one of the great things we find the Dekkhan Courts are not. Whether, if the Dekkhan Courts were situated as those of the Panjáb are, the people would appeal in the same number of cases I am not prepared to say; but I do not think that any sound generalization can be drawn from one province in India as compared with another, since we find that, with regard to all these provinces, the most essential differences exist between them. As a matter of fact, we find that the people in the Dekkhan do not appeal in cases above the proportion which I have stated, and that there is an enormous mass of evidence in the Dekkhan Riots Commission Report all telling us why they do not appeal. It was *not* found there that they do not appeal because they enjoy and value their right of doing so; but it *was* found that they do not appeal simply because, for the various reasons already stated in my introductory speech on this motion, and which I will not now weary the Council by recapitulating, they find that they *cannot* appeal.

"But even as regards the matter of the people valuing this right, we are told that they do, upon the strength of a statement, if I recollect rightly, of Mr. Justice West.

"Now, I wish, with the permission of the Council, to read to it the statement of an officer—whose name, unfortunately, I am not at liberty to mention—who has not, like some of our critics, never been in the Dekkhan at all, but who has spent a large portion of his Indian service in Mufassal work of the most arduous and searching character. What he says is this"—

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"Has this officer been in the Dekkhan?"

The Hon'ble MR. HOPE:—"Yes; and he was for some time Collector of one of the four districts for which we are at present legislating. He writes:—

"'Another argument is, that "the people" value the power of appeal. If by "the people" is meant the plaintiff class—the saukárs—I do not doubt this at all, since the more lengthy, dilatory and costly are legal processes, the greater advantage has the rich and intelligent suitor over a poor and ignorant opponent; but I deny it altogether as regards the more numerous class of defendants.'

"The Hon'ble the Law Member next said that no suits could be named in which such difficulties occurred as in mortgage-cases; and that Bombay was no exception Mr. Naylor was called in to prove. Mr. Naylor, so far as I can

see, states very little more than, and that not in a very different manner from, that which I stated myself. He says, which is a truism I suppose, that—

'the intricacy of a suit in no way depends upon the social status or occupation of the parties thereto';

and he goes on—

"'It is to the subject-matter of an action we must look in order to judge whether it is likely to involve complicated issues; and those who are acquainted with the usual range of litigation will unhesitatingly affirm that questions relating to mortgage claims are amongst those which are most prolific of knotty points and legal difficulties. It makes no difference in this respect whether the value of the matter in dispute be small or great, or whether the parties to the suit belong to one class or another.'

"In this he furnishes no answer whatever to the statement which I make, that the mortgage-cases may some of them be easy and others difficult. As to looking at the subject-matter, he is at variance with the other judicial officer, Mr. Wedderburn, who tells us that 'experience shows that these tests are fallacious.' There is nothing in this quotation from Mr. Naylor to controvert what I have said, that even these matters of priorities, &c., may not often all be settled on very ordinary rules. In fact, if it was not so, it would not be possible for our Subordinate Judges to deal with them so satisfactorily as we see they do, from the fact that only about 16 per cent. of all their decisions are reversed in appeal.

"The Hon'ble Mr. Stokes next passed a criticism upon an answer which I gave at the time of the introduction of the Bill to a question put by the Hon'ble Sir Alexander Arbuthnot. I was saying that 'mortgage-cases are usually only difficult if they happen to involve questions of priorities and the like, or there are several creditors'; and Sir Alexander Arbuthnot enquired 'whether there might not be questions of title.' I answered that 'under the Bombay revenue system the name of the owner of every field is entered in the Government books. It would only be in most rare instances that the man whose name appeared was not the real owner; and so questions of title are not likely to give trouble.' That is every word of it absolutely correct. The ruling of the Bombay High Court which the Hon'ble the Law Member produces is a ruling perfectly well known to every revenue-officer in the Bombay Presidency. I did not say that the entry of a man's name in the books was absolute evidence of his being an owner of a field. I did say that, owing to the system of so entering names,—and I repeat it now in more detail—in nineteen cases out of twenty it is the man to whom the field really belongs that will get his name entered, and that, therefore, if you take up a name in the books, the chances are that in nineteen cases out of twenty the person is the owner; and therefore, finally, questions of title will give a great deal less trouble

where there is this system of entry than they would do if it did not exist. Questions of title are not likely to give special trouble; and I defy any one to contradict the statement."

The Hon'ble MR. STOKES :—" I wish to explain that the remark of the Hon'ble Mr. Hope was intended to convey the impression that difficult questions as to title could not arise, inasmuch as the Collector's record would serve as evidence of the title."

The Hon'ble MR. HOPE :—" I have only to say that I usually endeavour to speak with great care; that my words are carefully weighed; that what I have said is exactly what I mean, and that I neither said what the Hon'ble Member attributes to me, nor did I mean to say it. What I did say was that 'questions of title are not likely to give trouble'—and no more they are.

"I must now, before going into one or two matters with which I propose to finish my unavoidably long reply, refer to the remarks of the Hon'ble Sir Alexander Arbuthnot in reply to the observations of the Hon'ble Messrs. Thornton and Thompson and Sir Robert Egerton, who had been urging the necessity of supporting the Local Government. The Hon'ble Sir Alexander Arbuthnot reminded us that it was very well to support the Local Government on matters of detail, but that when we come to matters of great principle we must judge for ourselves, and interpose if necessary. That struck me as a very singular argument, because, if my memory does not deceive me, the hon'ble gentleman is one of those who have been distinguished for arguing hitherto that this question of appeals was a matter of detail, and one which might fairly be left open, and not considered as a matter of principle. In the original consideration of the Bill by the Government of India the question was left open as one of detail; and in consequence of this, the question of 'appeals *versus* revision' was not mentioned as one of the seven great matters of principle which His Excellency the President enumerated in his concluding speech on the last occasion. It may perhaps be convenient to the Hon'ble Member to argue at one time that a thing is a matter of detail, and at another time that it is a matter of principle; but I can only say that I cannot follow him to that extent."

The Hon'ble SIR ALEXANDER ARBUTHNOT :—" I beg to remark that I am not at all conscious of having ever argued that this question of appeal was a matter of detail. I used no argument before to-day on that subject at all in this Council. If my memory serves me rightly as to what passed in the Executive Council, my view was—and it was the view concurred in by the Viceroy—that it was a point that might fairly be treated by the Executive Government as an open question.—Still I regard it as involving an important principle."

The Hon'ble Mr. Hope :—" I do not understand, even with the explanation now given by the Hon'ble Member, how the matter can at one and the same time be so important in principle that it is necessary to overrule the Local Government on it, and yet of such minor importance that it may be left entirely an open question.

"It has next been objected by the Hon'ble Sir Alexander Arbuthnot that I have treated the despatch of the Secretary of State as advocating the abolition of appeal. The Hon'ble Member points out that the words of the despatch are somewhat vague, and that he believes the framer had no intention to extend the system of appeal—if I have not correctly taken down his remarks I hope he will point out my error—that the framer of the despatch had no intention to extend the system of appeal to mortgage-cases. Of course, what may have been in the inner consciousness of the framer of this despatch I am unable to affirm; but, reading the despatch on the broad lines on which it seems to have been drawn, it appears to me perfectly clear that what the Secretary of State did intend was that there should be Courts, without an appeal, for the relief of the Dekkhan raiyat in the mass of those troublesome cases in which he finds himself involved. The Hon'ble the Law Member tells us that the mass of the cases will be mortgage-cases; it, therefore, seems to follow that either we must exclude appeals in mortgage-cases, or, if we admit them, we shall be going directly contrary to the intention of the despatch of the Secretary of State.

"The Hon'ble Sir Alexander Arbuthnot has also remarked that Sir John Strachey and others of us have overstated our case in this matter, because, if this abolition of appeal is necessary in Bombay, then it must be good and necessary for all India. I do not at all follow the inference, for my own part. The Hon'ble Mr. Thornton, for instance, has very strikingly pointed out to us that in one province in India—the Panjáb—appeals in certain cases are largely resorted to, whereas in another province—the Dekkhan—we find that the people appeal in only 3 per cent. of the cases. There is, therefore, no ground for drawing any such inference as that of the Hon'ble the Law Member. Whether appeals are good in other provinces or not is a question not now before us, and on which we must now reserve our opinions until a proper time arrives for forming and expressing them.

"Then, again, it was urged by the Hon'ble Sir Alexander Arbuthnot that the Hon'ble Sir John Strachey had omitted to say that an application for revision might be preferred by a dishonest suitor, and that the revising Judge might not call on the opposite party for a reply; in which case grievous injustice might possibly be done. Now, unless my memory deceives me, we were told by the Hon'ble the Law Member at the time the Bill was introduced that one of the great advantages of the system of appeal was that the Judge could, if he thought

fit, dispose of the appeal at once, without calling on the other side for a reply. I confess myself somewhat perplexed whether to follow the pleading of the Hon'ble the Law Member or of the Hon'ble Sir Alexander Arbuthnot. It seems to me that on this particular point they have placed themselves on the horns of a dilemma; and I think I had better leave them there.

"Now, as to the difficulty alluded to by Sir Alexander Arbuthnot of the Subordinate Judges having to serve two masters, I think that is very greatly exaggerated by Mr. Naylor and others. The only occasion on which the work could possibly overlap is, as Sir Alexander Arbuthnot has very correctly said, when a Subordinate Judge in his capacity of an ordinary Sub-divisional Judge of the district had tried a suit of the value of over Rs. 500 in which an agriculturist was concerned: I admit that under those circumstances the District Judge might take one view of points in chapter III of the Bill and the Special Judge another. If, however, the Hon'ble Sir Alexander Arbuthnot had pointed this out in committee, perhaps there would have been no objection to providing that cases in which agriculturists were parties should come under the control of the Special Judge, even when they exceeded Rs. 500, although I must say that I do not think it necessary. But the main answer to the objection is that cases of this kind are so few that for one case of over Rs. 500 in value there will probably be fifty on the other side; and the rulings of the Special Judge in the larger work will practically prevail.

"The Hon'ble Mr. Stokes told us, in concluding his remarks, that in making them he had studiously abstained from statements on his own authority. I think that, considering the high position the Hon'ble Mr. Stokes holds in this Council, we might have hoped, for our own guidance, that he would have been able to come forward and state to us with some authority his own personal views and opinions, to which no doubt the Council would have deferred as far as possible. I will not pursue that question by noticing the remark he was pleased to make regarding what he considers the absence of judicial experience in myself. I consider that such a remark was uncalled for, and that I cannot do better than leave it, as a specimen of good taste, upon the records of this Council.

"I regret having to detain the Council by speaking at such length; but, at the same time, I feel it my duty to meet, as far as I am able, the various points brought forward against the proposed amendment; and I must therefore notice very briefly the allusions to the three Bombay officers upon whom, it would appear, the Hon'ble the Law Member relies. Mr. Naylor, first of all, is quoted as showing that the Special Judge in revising the decisions will do so under three disadvantages. The first one out of the three read out by the Hon'ble the Law Member he had himself to confess was partially wrong. Then with regard to the second, that the application would generally have to be inquired

into at a distance from the homes of the parties, I can only say that it appears to me a complete misapprehension; but as I shall have on the next amendment to say a few words upon that point, I will not detain the Council with it now. Then as to the third, that the parties will have no absolute right to bring their cases before the Special Judge, and he may refuse their applications without any inquiry at all, I have already met that by saying that it was absurd to suppose that a selected officer, such as a Special Judge, would not do careful and equal justice, although there might be an infinitesimal difference of status between appellants and applicants for revision. Again, in connection with Mr. Naylor's remarks, if I correctly took down the Law Member, he said that the system of revision would produce uncertainty in decisions for a period of three years, within which a petition might be brought forward; whereas under the system of appeal a certain number of days—ninety I think—would render a decision unappealed against final, and dispose of the whole matter.

"Now, in the first place, ninety days would not dispose of the whole matter. In any case where there was a double appeal, and through the delays which I have already pointed out, it might so occur that the whole matter, instead of ending in ninety days, could not be disposed of in less than six years. But, besides that, I should like to ask the Hon'ble Member whether there is any limit to the period of time within which the High Court may exercise its own power of revision under section 622 of the Civil Procedure Code."

The Hon'ble MR. STOKES :—"There is no limit."

The Hon'ble MR. HOPE :—"I am aware of the fact. Therefore, in this matter, the appeals stand upon exactly the same footing as the revision does; and the argument that under the appeal system there would be a finality obtained in a short time instead of a long one is not worth the breath expended on it.

"Next as to the observations of Mr. Wedderburn. Mr. Wedderburn, be it remembered, should, in fairness I think, be counted, when he speaks, on our side as well as against it; for he says 'experience shows that these tests (of making appeal depend on the class of suit) are fallacious.'

"As to revision, Mr. Wedderburn's remarks are evidently based upon a total misapprehension of the sort of revision intended. Mr. Wedderburn writes as if it was intended that the revision should be merely carried on upon returns. I have never said anything which could have given countenance to that supposition. The revision will, as it has been shown, and as the Bombay Government say, be mainly conducted by reading the record. As to that record, and to the remarks of the Hon'ble the Law Member regarding it, in which he considers that he has the support of Mr. Wedderburn, I have only to say, if we are to suppose that the Judge will be unable to deal with these

cases because they are written in the vernacular, then it is obvious that the executive officers who conduct the whole administrative work of this great empire are in ninety-nine cases out of a hundred equally unable to dispose of the matters before them. Any person who has had any executive experience—to which perhaps I may pretend—knows that three-fourths or five-sixths, and in some districts ninety-nine-one-hundredths, of his time is taken up in disposing of work in the vernacular. Now, if these officers can do their work in the vernacular efficiently—and I do not think any one doubts that they can so do it—then the Special Judge will be able to do his work too. But if they cannot, then all I can say is, that I am very sorry for British India!

"In conclusion, I have to turn to a subject which I enter upon with great reluctance; and that is a criticism of the Hon'ble Mr. Justice West's paper which is before us. I myself was in hopes that that paper would only have been quoted where it could have been quoted without provoking any adverse criticism; because it seems to me to be somewhat invidious and ungracious to bring into court the writings of an officer who has kindly volunteered to give us his opinion, to criticize that opinion, and still more to criticize it in a place where he is unable to reply. At the same time, so much has been said in praise of this paper, and so much weight has been attributed to it by the Hon'ble the Law Member, that I cannot but advance upon the task, however distasteful to me.

"I hope I do not imply any disrespect to Mr. West when I say that the paper is a very diffuse and a very involved document. As far as I can make out, and I shall, I hope, do my friend Mr. West no injustice, his argument appears to be this. In the first place, he assumes the Subordinate Judges to be 'ill-informed,' 'poor,' 'half-educated,' of 'weak moral natures,' if not corrupt, still open to 'influence leading to partiality,' of 'exuberant ingenuity,' 'well crammed with English legal formulas but unimbued with the animating spirit of English institutions,' and hence liable to 'very wild notions,' and subject to fits of 'capricious harshness' and 'ill-judged benevolence.' These are all Mr. West's own phrases. The Subordinate Judges of Bombay will no doubt be extremely interested to hear the opinion held of them by one of their own High Court Judges, and will assume that Mr. West himself will not be disposed to promote them to the post of District Judge, to which they probably hope to attain under the new regulations for admitting Natives to offices held by the Civil Service. In the second place, he assumes that there will be no more than 'casual supervision,' though on what ground does not appear, since the supervising staff will be large, they will spend above half the year in travelling about the districts, supervision will be their sole occupation, the provisions of the Bill as to their powers are stringent, and they will be picked men. From these two premises he makes the deduction that there will be 'imperfect investigation' and 'defective re-

cord,' and that the scheme is 'as unpromising as any that could be devised.' Now both of these premises are erroneous. The Subordinate Judges are *not* as black as they are painted; and I do not think that any elaborate argument from me is necessary to substantiate that. We find that, as a matter of fact, in these appeals nearly 68 per cent. of the decisions of these Subordinate Judges are upheld, and only 16 per cent. are reversed. Therefore, upon what grounds they are held to be so worthless as they are represented I cannot comprehend. And, as I said before, the second premise is also defective. Still, even if this were not so, the deduction which is drawn can only be drawn, firstly, by attributing to all suits, with reference to the record, what can only apply to ten-rupee suits; and secondly, by ignoring the fact that many of the remarks made apply just as much, if at all, to the appeal system as to the revision system.

"But even if the two premises were not incorrect, and if the deductions, even supposing the premises correct, were not unsound, Mr. West entirely demolishes his own case by one statement, which will be found in paragraph 31, which is as follows: 'The raiyat himself, however, does not, in fact, appeal in more than one in a hundred of the suits of small amount that are brought against him.' Where, then, is the security offered to him? Where is his alleged appreciation of the appeal system of which we have been told so much? And why does he not appeal? Is it because he is always wrong, poor fellow, as the Hon'ble Sayyad Ahmad says? Is it really true, as Mr. West would have us believe in another place, that in 'nine out of ten of the suits that now come before the Dekkhan Courts' the 'claim is a just one'? Nay rather, he sits quiet in his ignorance, his poverty, his despair of contending successfully with those who are in every way his superiors. Who *do* appeal then? Those who are always right? Or those who know they are most likely to win? But the Hon'ble Mr. Stokes would endeavour to persuade us that it is the *raiyat* who is right, and that it is he who gains by the appeal system. All I can say is that, if he gains by it, he abstains from what is to his advantage in a very singular manner."

The Hon'ble MR. STOKES:—"It is the benefits arising from the existence of the system upon which his appreciation of it depends."

The Hon'ble MR. HOPE:—"Well, I can only say that he shows very great self-denial. But with reference to all this I will only add that, depend upon it, the truth really is that, while the appeal system may sometimes be a remedy for the rich, it is usually nothing but a mockery for the poor. As to Mr. West's paper in general, I must say—and I trust this is the last occasion on which I may be called upon to criticize it—that, while I have read it with pleasure, as one must read everything proceeding from his brilliant and facile pen, I cannot shut my eyes to his obvious tendency to mistake assertion for argument,

and to cover fallacy by sarcasm. Opening, as it does, with the vision of 'a kind and impartial authority' sitting up aloft and dealing out to the raiyat the 'minimum of land' 'requisite for his decent subsistence,' and at the same time dispensing the rest of his worldly goods to his honest and satisfied creditors; and closing, as we see it, with a tableau of this same raiyat become wealthy—one does not quite know how—with his cheque-book sticking out of his coat-tail pocket (he will have a coat by then), we cannot but look upon it as a pleasing work of fiction, rather than as a serious contribution towards a useful solution of the difficult question we are dealing with. In conclusion, I have only to add that it should be borne in mind that, when the Bill was introduced, the Hon'ble the Law Member found great fault with the Bombay Government for not having, in the first place, consulted the Bombay High Court. The Bombay Government have now consulted the High Court; and we know what the High Court have said. Why the Hon'ble Member objects to follow the authority which he has invoked it is difficult to perceive. He has appealed to Cæsar, and Cæsar has decided against him. He has called upon the High Court to curse his enemies; but it seems to me that they have blessed them altogether."

The Hon'ble MR. STOKES said that no one who read the opinions of the Bombay Judges between the lines—especially the remarks of Mr. Justice M. Melvill—could fail to see that they were laughing at the whole thing.

The Hon'ble MR. HOPE:—"I have no such powers of penetration as the Hon'ble Member; but I can see no irony in it, except the irony of fate, which has led to the reference he desired ending in the manner it has done."

His Excellency THE PRESIDENT said:—"I have felt in the course of this very protracted discussion that the first and second amendments placed on the notice paper by my hon'ble friend Mr. Hope are virtually and substantially interdependent parts of what for all practical purposes is the same motion, and that it is difficult to consider them with convenience or advantage separately for that reason. But, assuming that the Bill as eventually passed will be so far replaced in harmony with the original intentions and purpose of the framers of it and of the Local Government as not to exclude mortgage-cases from that supervising authority which the Bill provides for all other cases mentioned in it, I must frankly say that, after having read with care the Report of the Select Committee, and after listening with great attention to the remarks of my hon'ble colleagues the Law Member and Sir Alexander Arbuthnot, I have not heard any argument which satisfies my own judgment that there are sufficient grounds for separating mortgage-cases from all the other cases referred to in the clause which the Hon'ble Mr. Hope proposes to amend, and applying specially to those cases the system of procedure which, as I understand, the majority and the minority of the Committee have, both of

them, agreed to exclude from all the other cases—a procedure which the Local Government and those who framed the measure regard as absolutely incompatible with the attainment of one of the main objects of the measure, which is to simplify and to cheapen the administration of the law to a helpless and poverty-stricken portion of the population. It appears to me that all the arguments used in favour of admitting appeals in mortgage-cases would equally apply to the extension of appeals to all the other cases referred to in this clause; and as the whole of the Committee have agreed in excluding the right of appeal from these cases, I fail to recognize that any sufficient case has been made out for applying it to mortgage-cases. With reference to the remarks of my hon'ble friend Sir Frederick Haines and my hon'ble friend Mr. Thornton, it appears to me that they wandered a little away from the practical subject we have to deal with. I have no doubt that nobody is in a better position than my hon'ble friend Mr. Thornton to tell us what are the feelings of the peasantry of the Panjáb, and what are the facts of the experience derived from the working of the appeal system in that province. But we are not legislating for the Panjáb; we are legislating for a peasantry of the most poverty-stricken, depressed, and miserable portion of the Dekkhan, and with the object of ameliorating their condition. The case which we are legislating for is avowedly an exceptional case; and it is because it is exceptional that we are called upon to legislate for it. I think we must all hope that the condition of the peasantry in the Dekkhan is not the condition of the peasantry in other parts of India; and that this exceptional and, as we are obliged to acknowledge, discreditable state of things has notoriously grown up unchecked, if not encouraged, by the practical operation in certain localities of our existing Civil Code, and the application of those legal conceptions which govern the procedure and lead to the decrees and judgments of our civil tribunals. That being the case, I must say that my own vote will be given without hesitation in favour of this amendment."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	His Excellency the Commander-in-Chief.
The Hon'ble Sir J. Strachey.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble MR. HOPE next moved that for section 54 of the Bill the following section be substituted (namely):—

"54. The Local Government from time to time may, and if the Government of India so direct shall, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators, and may cancel any such appointment.

Special Judge.

"Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function except those which he is empowered by this Act to discharge.

"If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

"No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a Bench, in any suit or proceeding under this Act."

He said:—"My Lord, I have already mentioned that the Government of India, while fully approving of the proposal of the Bombay Government to accompany the curtailment of appeals by inspection and revision, thought it desirable to strengthen the staff by a Special Judge.

"'The Governor General is of opinion,' it was said, 'that, looking to the arduous nature of the duties which the Act imposes on the Subordinate Judges, and the large discretion it confers on them, the appointment of a special officer of this sort, who would ordinarily be chosen from the more experienced District Judges, is essential to the proper working of the system proposed.'

The Local Government readily acceded to this.

"The majority of the Select Committee have now held that their admission of appeals in mortgage-cases which, they say, 'form a very large class, and the most important class, of cases to be heard under the Bill' renders the Special Judge unnecessary."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"If the Hon'ble Member will excuse my interrupting him, I wish to say that, as the first amendment proposed by him has been passed, I for one, and I think also my hon'ble colleagues who voted with me on the first amendment, are not disposed to oppose the second amendment, and therefore I think the time of the Council might be saved by my mentioning this at once."

The Hon'ble MR. HOPE:—"With reference to that, I have only to say that in that case I shall be most happy to save the time of the Council and myself; but as some objections have been made with reference to the question of a Special Judge which I intentionally left unanswered, perhaps I may be allow-

ed to read my remarks on the subject, or, if that is not convenient, perhaps they might be taken as read and placed on record."

The Hon'ble SIR ALEXANDER ARBUTHNOT:—"Cannot the Hon'ble Member speak on the points on which he wishes to reply? I for my part have the strongest objection to written speeches; and I think that written speeches not delivered in Council, but placed on record, are especially open to objection."

The Hon'ble MR. HOPE:—"I quite agree with the Hon'ble Member. For reasons well known to him, however, I have found it necessary to prepare written speeches in this instance."

His Excellency THE PRESIDENT said it was desirable to save time, if possible.

The Hon'ble MR. HOPE having then waived his objection, the motion was put and agreed to.

The Hon'ble MR. HOPE then moved that for section 68 of the Bill the following section be substituted (namely):—

Pleaders, &c., excluded in certain cases.

"68. No pleader, vakíl or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif, or to any case cognizable by a Subordinate Judge under this Act, the subject-matter whereof does not exceed in amount or value one hundred rupees:

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, Village-Munsif or Subordinate Judge, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party:

"Provided also that a Subordinate Judge may permit a pleader, vakíl or mukhtár, or an advocate or attorney of a High Court, to appear before him on behalf of any party to any case of the description aforesaid in which, for reasons to be recorded by him in writing, he deems it desirable that the party should have such assistance.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

He said:—"My Lord, the whole essential difference between this and the section now in the Bill lies in the third clause. This question of pleaders originated in a suggestion of the Secretary of State in paragraph 31 of his despatch already alluded to, that possibly the exclusion of professional pleaders from the 'Courts with summary jurisdiction and without appeal up to a limited amount,' which he recommended, would be desirable. The Bombay Government's draft Bill accordingly contained a section substantially similar to that which I am now proposing. From Conciliation and Village-Munsifs' Courts the exclusion, follow-

ing in the case of the latter the Madras law, was absolute; from cases before a Subordinate Judge it only extended up to a limit of Rs. 100, and was subject to a proviso allowing the Court to admit a pleader in any case in which professional assistance seemed to it to be really desirable. This proviso remains as section 69 of the Bill now before us. The limit of Rs. 100 was carefully chosen, in order to check evasion by slight exaggeration of the claim in the petty suits which form the bulk of litigation. The Bill as introduced maintained, as does also the Bill now reported, the exclusion from Conciliation and Village Courts; but, as a sort of compromise between conflicting opinions regarding exclusion from Subordinate Judges' Courts, it adopted the expedient of empowering the Judge to refuse costs, which was said to work well in the Small Cause Courts of the Presidency-towns. To this the Bombay Government emphatically object, in the following terms:—

"'This Government fear that the compromise which has been adopted with respect to section 69 of the Bill will render the provision for the exclusion of pleaders in cases before Subordinate Judges altogether futile. The amount to be allowed in the costs of a suit on account of fees of pleaders is fixed by law (Act I of 1846, section 7; Regulation II of 1827, section 52, and Appendix L); and in the case of suits for not more than Rs. 2,000 it amounts to 3 per cent. only of the value of the suit. The amount of the fee at stake in any case contemplated by section 69 of the Bill could thus never exceed Rs. 3; and it is obvious that the possible loss of so small an amount as this will not deter either suitors from engaging or pleaders from giving professional assistance. The latter will of course depend, as they do now, for the most part upon the remuneration privately agreed upon, and when possible will take care to be paid beforehand. The Governor in Council trusts, therefore, that it will be found practicable substantially to restore the provisions of the draft Bill submitted by him,' &c. As to the futility of the expedient about costs all parties seem now agreed, and the Select Committee unanimously struck out the section (69) regarding it. But the majority have gone further, and would get rid of a difficult question by substituting no provision at all, and leaving pleaders to appear in all cases, as at present. Now, I submit that on its merits, no less than in view of the decided opinion of the Bombay Government, the question cannot be thus passed by. As to the remarks in section 27 of the report, they seem to me to be altogether beside the mark. No one has denied, as far as I can see, that 'well-qualified pleaders are a material aid to the Judge in dealing with a case of any complication or difficulty,' nor does anybody that I know of allege that 'in suits under Rs. 100 in value the aid of pleaders cannot be required,' or that 'the difficulty of a case' depends 'on the amount at issue.' What *is* affirmed is, that well-qualified pleaders are of little use, that ill-qualified or unprincipled pleaders cause much harm, and that both are a needless expense, in cases which are *not* of complication and difficulty; and that from these alone they should be excluded. This, and no more, is accordingly what my amendment provides for. It may be added that the fees which parties can afford to pay in these

petty suits are not, even when they exceed the legalized limits, sufficient to afford a livelihood to the best class of pleaders. As for the idea, to which the remarks also allude, that the saukár will get behind the exclusion of pleaders by employing as his servant and sending to Court in his behalf 'some man who, though not a professional legal practitioner, would have a considerable knowledge of law and of the ways of the Court,' it seems to me to bear a strong family likeness to certain other devices, more ingenious than practical, by which we have already been told that other provisions of the Bill may be defeated. Page 338 of Appendix C to the Commissioners' Report shows that the largest number of suits filed by one money-lender in a year in a Court taken as a test was 31. It, therefore, certainly would not pay any except the great money-lenders, who, we are told, are the most respectable, and probably would not pay even them, to employ a separate servant of the class indicated solely to carry on suits. It would also be the duty of the Court to put down, by means of the discretion allowed it, any palpable evasions of the spirit of the law, and in doubtful cases to give the defendant, under section 69, proper professional assistance. And finally, the cases in which the device could be used at all would, by the hypothesis, be only those simple ones in which knowledge of law would give no great advantage.

"But I find in the weight evidently attached by the majority of the Select Committee to 'knowledge of law and of the ways of the Court,' as I did in the remark of the Hon'ble Sayyad Ahmad when the Bill was introduced, that 'the Courts receive considerable assistance from vakíls, and that the more ignorant the suitor is, the less probability is there that he will be able to explain his case in the confusion he experiences in a Court of justice as well as he can to his adviser outside the Court'—I find, I say, in both these the traces of false ideas and practices which this Bill, by one of its fundamental provisions, aims at destroying, root and branch. What I refer to is the view of the mere lawyer, that a Court of civil justice should be a place where a man sits on a high seat, in gown and bands, to manufacture decrees out of materials laid before him, rather than the view of the practical statesman, so well set forth by Sir James Stephen, that the Judge should confront the parties, note what they say, see the facts sifted to the bottom, and pass order accordingly.

"To sum up: I am making no attack upon pleaders either in general or in particular. I say nothing whatever as to the character and qualifications of the pleaders to be ordinarily found at Subordinate Judges' Courts. I merely affirm that in all simple cases they should be excluded, because they are a heavy expense to the parties, while the Court can follow the law and ascertain the facts as well, if not better, without them, but that, on the other hand, they should be admitted wherever it is clear that they can really be of use. This is all my amendment

provides for. To the objection that to give to Judges a discretionary power of exclusion will lead to subserviency on the one hand and favouritism on the other, and will destroy the independence of the Bar and the efficiency of the Judge, I reply that none of these consequences have followed the discretion, as to the costs of even advocates, which Presidency Small Cause Court Judges have for nearly thirty years enjoyed. The objection that many pleaders may be driven to seek other employment I meet by saying that, if the profession be weeded of inferior members, so much the better for those really competent and for suitors, as also that, after all, Courts and suitors are not made for pleaders. In conclusion, what I advocate is merely what is the law in France; what is aimed at by the denial of *all* costs in cases up to Rs. 100 in the Presidency-towns; what has not been objected to by the Judges of the Bombay High Court; and what is deemed essential by the Local Government."

The Hon'ble MR. THORNTON said:—"In accordance with the general principle I have already explained, I shall not vote against this amendment; at the same time, while fully sympathizing with the object of the Bombay Government, yet, judging from my own experience, I strongly doubt whether this extensive exclusion of pleaders, vakíls, mukhtárs and others from practising in the Courts will have the effect that is intended. I strongly doubt it; because, although such exclusion might be possible and beneficial in a newly-acquired province, it is questionable whether it can be beneficially introduced in a locality where people have been for years accustomed to the assistance of the legal practitioners. I very much fear the practical result will be that, while the respectable pleaders and mukhtárs will be excluded from the Courts, a class of legal practitioners will continue to practise outside the Courts, and will be all the more unscrupulous for being unrecognized and uncontrolled.

"My opinion on this point, my Lord, is not a mere surmise, but is based upon practical experience at Delhi, where I was district officer many years ago. That district was formerly attached to the North-Western Provinces Government, and the people were accustomed to employing professional agency in Courts of law. When it was transferred to the Panjáb, the Panjáb system was introduced, which at that time excluded all legal practitioners from the Courts. It soon, however, became apparent that, although legal practitioners were excluded from the Courts, there sprung up outside the Courts a number of most disreputable and unscrupulous practitioners. The result eventually was that in the year 1866 my respected Chief and lamented friend Sir Donald Macleod—a patriarch and philanthropist to the backbone, that is, a lover of all mankind except lawyers—decided to extend the Pleaders Act to the Panjáb. But, though the results of my own experience are adverse to the proposals of the

Bombay Government, it does not follow of a certainty that what happened in the Panjáb will happen in the Dekkhan; and as the Local Government strongly desires to try this measure, I shall not oppose it."

The Hon'ble MR. COLVIN said:—"As I understand the arguments which have been advanced by my hon'ble friend the Mover, he wishes to exclude pleaders in petty cases, on the ground that, even when well-qualified, they are of no use, and that, if ill-qualified, they may do great harm. Now, the first of these two propositions seems to me very questionable. I am not at all disposed to admit that well-qualified pleaders are of no use. On the contrary, I believe that in all cases they are of very great assistance to a Court. It so happens that I have served for some years in a province where no pleaders are, or ever have been, admitted; and I must say that my experience there has not led me to think that the absence of pleaders is an advantage in administering justice. More harm, I believe, results from excluding well-qualified legal practitioners than from admitting them. The apparently simple procedure of leaving parties to conduct their own cases does not tend to simplify justice, even with a practised Judge. With an inexperienced one, it is more likely to pervert it. Ignorant and uneducated litigants are not unlike a pair of the swordsmen that one sees in this country, making feints and flourishes in the air before they cross swords. They are slow to commit themselves to statements of fact, which may hereafter prove inconvenient, but are quite ready to be voluble about their adversary's private character and general misdeeds. The Court cannot arrive at the facts if it refuses to listen to anything that is confused and irrelevant, and is obliged, even in simple cases, to waste much of its time in finding the issues before it can try them. When the points in issue have been ascertained, matters are not much advanced. The parties know very well what they want, but have very confused notions of the way in which it should be proved, and of the evidence which they require. The Judge, if he wishes to do justice, must not only try the suit, but must also in a great measure conduct it on behalf of both parties without losing his impartiality. The labour and responsibility which this throws upon a conscientious Judge is excessive, and with a careless and a lazy one may lead to much injustice.

"The second part of my hon'ble friend's argument is that bad pleaders may do a great deal of harm. I do not deny this; but I doubt whether by excluding pleaders from appearing in Court we shall get rid of any harm which they may be able to do. It is not what unscrupulous pleaders do or say in Court that is usually mischievous, for there they are acting under a sense of responsibility and are subject to control. They can do much more harm out of Court by giving bad advice; and their power to do this will be in no way diminished by prohibiting their appearance in Court.

"A point to be remembered also is that by narrowing the field for legitimate practitioners, more room will be left for a worse class of legal advisers. Litigiousness and chicanery are no monopoly of unscrupulous pleaders. As has been truly said by my hon'ble friend Mr. Thornton, there are always a tribe of petition-writers, stamp-sellers and other such hangers-on of the Courts who are ready to take the place of pleaders when pleaders are not forthcoming. These men, if they do not know much of law, often have a pretty good knowledge of the character and habits of the Court officials, and a familiarity with the forms of ordinary procedure which impose upon novices and strangers to litigation. Suitors prefer the advice of these men to none; and very bad advice they often receive, However bad it may be, the givers of it are under no kind of responsibility for what they do. There is no recognized relation between them and the litigants, and they are neither amenable to the opinion of their fellows nor to the executive control of the Court. I think that anything which is likely to throw more business into the hands of such men as these can do nothing but mischief.

"On these grounds alone I should be opposed to the exclusion of pleaders. But I must also say that Mr. Justice West's argument on this subject has made more impression on me than it appears to have produced on the Mover. It has been objected to that argument that the saukár never has a very large stake in a single case, and that it would not be worth his while therefore to employ a special agent. But a saukár does not lend money to a single individual. He has a number of transactions. It is quite impossible for him whenever he wants to recover money in Court to attend personally on every occasion. He must employ somebody. The Bill allows him to appoint an agent; and naturally he will appoint an agent, if he can procure one, who has some knowledge of the business to be done. Even if the agent has not that knowledge to commence with, the habit of attending the Courts will give him a familiarity with their practice. The raiyat, who is often an utter stranger to them, will be at a great disadvantage in contending against such an adversary. My objections to the present amendment are urged as much on behalf of the raiyat as of the Court and the pleaders—in fact, more so; and I believe, if this amendment should be carried, that the raiyat will be the chief sufferer from its effects."

The Hon'ble MR. RIVERS THOMPSON said:—"As a member of the Select Committee who voted for some such provision in the Bill as the amendment now proposed, I am of course prepared to support that amendment. My hon'ble friend Mr. Thornton has, contrary, I must say, to his usual practice, spoken in one sense and voted in another. I have no doubt the Council, while it enjoyed his speech, will gratefully accept his vote; but I think he makes one mistake. In speaking generally of the benefits of admitting pleaders, and the evil that is done by excluding them, he seems (as also does my hon'ble friend who spoke

last) to have argued rather on the supposition that pleaders were absolutely excluded in all cases ; but, as far as I understand the amendment, it goes only so far as to extend the exclusion to cases cognizable by a Subordinate Judge, the subject-matter of which does not exceed in amount or value one hundred rupees. Therefore, in all the larger cases, which are of greater importance, there is no prohibition against the admission of pleaders ; and, practically, what the amendment will establish is that pleaders shall be excluded from suits up to one hundred rupees, but that beyond that amount they will have a right to appear ; and that, even as regards smaller cases, it will always be in the option of the Court, at its own discretion, and for reasons to be recorded in writing, to admit the pleader where it is thought essential that he should appear. The argument, therefore, against the exclusion of pleaders generally has no place in the present discussion ; and taking the general object of the proposed measure, namely, to attempt by conciliation to adjust all petty differences, I question whether the admission of advocates would be beneficial to either side in such cases. We are passing here legislation which is purely exceptional in its character ; and in the interesting speeches which we heard on the first amendment, in which the revered name of Bentham appeared frequently, and the legal acumen of Mr. Justice West and other judicial officers was brought forward, it struck me that, had any of these eminent authorities been present here, they would have been the last persons we should have desired to consult with respect to a measure which is one rather of executive and administrative arrangement than of precise legislative requirement and procedure; and admitting, as I do, the force of the criticisms upon which such great stress has been laid, as to the advantages of a qualified Bar in regularly constituted tribunals, I think we are dealing here with a state of things which requires exceptional treatment and on which, on the authority of those best able to advise, we are justified in going out of the beaten track. Indeed, I believe, if Jeremy Bentham had been in this room, and had had to discuss any of the sections which form part of this Bill, he would probably not have remained very long amongst us."

The Hon'ble Mr. Stokes said that on the occasion of the introduction of this Bill he had expressed his views with considerable fulness against doing anything calculated to exclude pleaders in assisting Judges in the consideration of the very difficult cases which would come before them under the Bill, even when the value was limited to one hundred rupees. All these mortgage-cases would come before Subordinate Judges ; and it seemed to him that the optional power of the Subordinate Judge to refuse to permit pleaders to appear was calculated to cause great subserviency on the part of the pleaders and a great suspicion of favouritism on the part of the Judge. With reference to that point, although the Hon'ble Mover had very wisely, for his own interests, refrained

from a fuller citation of Mr. Justice West's remarks, he (MR. STOKES) would take the opportunity of reading to the Council another short passage from Mr. West's paper. After pointing out that it had been our long endeavour, now approaching complete success, to supply the Courts with an educated, honest and independent Bar, and that every material proceeding, being taken in public, appealed to the moral and legal consciousness of the assembly, Mr. West proceeded :—

"The sense of responsibility thus engendered in the Subordinate Judges the Bill proposes, as far as possible, to destroy. In the first place, as the great majority of suits are for sums of less than Rs. 100, the Court will not be bound to allow pleaders' fees, and certainly will not allow them, except in special cases and for favoured practitioners. The amount of possible business being thus materially cut down, many pleaders will be forced to seek other employment. At present in many of the Subordinate Courts the three, four or five pleaders who only can gain a livelihood are barely sufficient to secure to all litigants who desire it independent assistance. If the numbers are reduced by lack of employment, as has happened in some cases in Sindh, to two, a creditor by retaining both pleaders, or securing them generally to his service, virtually cuts off his adversary from effective professional aid. But what is quite as important is that the pleaders who remain will in practice be entirely dependent on the Subordinate Judge. Any independence of bearing, any troublesome persistence, on the part of a pleader will be subject to punishment by the loss of his livelihood. Thus the salutary constraint of professional opinion will be altogether removed. The Judge's efficiency will sink with his sense of responsibility, with the independence and intelligence of his natural critics and interpreters to the public."

The case of the Presidency Small Cause Courts which had been referred to by the Hon'ble Mover as justifying the discretionary power of excluding legal practitioners did not appear to be in point. In the Presidency-towns the Judges of those Courts performed their functions in the midst of a large and independent society. They were controlled by an educated public opinion ; they were subject to public criticism. Some of them were barristers themselves ; and none of them would for a moment dream of riding rough-shod over any barrister or pleader who appeared before him.

The amended section also went beyond what he (MR. STOKES) understood to be the requirements of the Bombay Government. It put advocates and attorneys of the High Court on the same level as district pleaders and mukhtárs ; but in a letter from the Secretary to the Bombay Government, referring to the provisions of the draft Bill respecting the exclusion of legal practitioners from cases tried by Subordinate Judges, he found the following passage :—

"I am to add that, if such concession would tend to remove the objections of the opponents of those provisions, he [that is, the Governor of Bombay in Council] would not object to their being limited in their operation to district pleaders *so as not to affect pleaders or advocates or attorneys of the High Court.*"

It was a curious fact that might also be mentioned that the Hon'ble Mover had omitted all mention of this passage in the précis of that letter with which he had favoured the Council and which had been printed and circulated as a paper relating to the Bill.

The Hon'ble SIR ALEXANDER ARBUTHNOT said :—"It is perhaps almost useless that I should take up the time of the Council by any remarks on this amendment; for it is already evident what the decision of the Council is going to be. To the very strong, lucid and forcible arguments adduced against the amendment—an amendment, however, which the author of those arguments is prepared to support by his vote—I really have nothing to add that would be worth the attention of the Council. To my mind, those arguments, supported as they are by the arguments advanced by Mr. Colvin and by Mr. Stokes, are perfectly conclusive as to the inexpediency of the amendment now before us. I shall vote against the amendment."

The Hon'ble MR. HOPE said :—" The remarks of my hon'ble friend Mr. Thompson have been so complete and comprehensive with reference to the misconception under which it seemed to him, as to me, that the Hon'ble Messrs. Thornton and Colvin were labouring as regards the entire exclusion of pleaders, that there is very little left for me to say. The paragraph from the letter of Mr. Justice West upon which the Hon'ble Mr. Stokes would rely has already been answered by anticipation; and I do not find anything in it which calls for any further explanation. Mr. West states his opinion, and that opinion is of course entitled to whatever weight each reader of it may consider it to be worth. As to the control which is supposed to be exercised in Presidency Small Cause Courts by the public, I must confess that I think that control is very much exaggerated very frequently, and that all arguments of that kind may to a considerable extent be termed 'clap-trap arguments.' But, as a matter of fact, we happen to know that the arrangement checking employment of pleaders has worked for thirty years with perfect success in these Courts; and I see no reason why it should have worked otherwise.

" Regarding the charge which the Hon'ble the Law Member has made against me, of having omitted, because I supposed it would suit my purpose, a certain paragraph in a letter of the Bombay Government, I have only to say that my summary is as correct as the allegation regarding it is incorrect. Any person who will read the paragraph dispassionately will see that the Bombay Government are exactly of the opinion that they always were. But they say at the end regarding an admission of only pleaders, advocates or attorneys of the High Court that—

'if such concession would tend to remove the objections of the opponents of those provisions, he would not object to their being limited,' &c.

That is to say, the Government of Bombay offer, as a compromise, a concession which they would not mind making.

"If the Hon'ble the Law Member had expressed any desire in Select Committee to accept that compromise, it might no doubt have been considered. The only objection to inserting such a compromise in the Bill would have been that it is so utterly ridiculous, that I myself should have been ashamed of it. If, as the Hon'ble Member has been telling us, and quoting Mr. Justice West to prove, the business in these Courts is so small that only four or five pleaders can get a livelihood from it, and the tendency of our measure is to reduce this further, then I should like to know where is the business to come from which is going to support advocates and attorneys of the High Court? It is simply ridiculous to suppose that the attorneys and advocates will go out into the highways and hedges of the districts of the Dekkhan in order to carry on their business.

"Therefore, whether these words were put in or left out would not make the slightest difference in the section; and being ridiculous, as I take them to be, I think they are better left out".

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	His Excellency the Commander-in-Chief.
The Hon'ble Sir J. Strachey.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble MR. HOPE next moved that in section 39 the following words be substituted for the words "any of such parties" (namely):—

"or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties";

and that in section 47 the following words be inserted after the word "suit" (namely):—

"and no application for execution of a decree passed before the date on which this Act comes into force."

He said :—" My Lord, the object of this motion is to restore to the Bill the provision for making conciliation precede application for the execution of old decrees, which has been cut out by the majority of the Select Committee. As to its details, I may explain that the words for insertion in section 47 are those which were cut out, but that the alteration in section 39 is new, and intended to meet a mere doubt of drafting, raised by Mr. Naylor, as to whether the section as it stood fully tallied in respect of these old decrees with section 47 of the Bill as introduced.

"The reasons assigned for this excision will be found in paragraph 23 of the report, and are, briefly, that every existing decree must be assumed to be just; that no influence, however mild, can rightly be applied to induce a decree-holder to forego one jot or tittle of his legal rights; and that, if the debtor cannot pay, he may resort to the Insolvency Court.

"I may point out, *in limine,* that the statement that this excision is 'adopting the view of the High Court' would seem to be mistaken. The High Court have evidently not understood what was contemplated, and have supposed that it might be intended that the Civil Court should 'ultimately refuse to execute its own' decree. What Mr. Justice Melvill would have said if the scope and grounds of the measure had been explained to him it is impossible to judge. But the High Court cannot now be fairly quoted in the matter. Such explanation I will endeavour to afford.

"I am content to accept the premise that every existing decree must be assumed to be just; although I might easily impugn it by pointing out that the present Bill, in obliging the Courts in future to go behind the bond, and giving them special powers to reduce claims which they have been in the habit of admitting, proceeds on the very contrary assumption that their decrees made in the past have often been unjust. And I also admit that the debtor *can* obtain full relief from the Insolvency Court. But I maintain that friendly mediation rightly *may*, and under existing circumstances certainly *ought*, to be applied to obtain an early settlement of these old decrees. In the first place, we know that these decrees are very commonly for amounts which the debtor may, indeed, have made himself legally liable for, but which the creditor could not have reasonably expected ever to receive. The Dekkhan Riots Commission and Mr. Auckland Colvin both bring out this fact. Then, again, we know that, owing to frauds in execution, many of these decrees have really been satisfied over and over again. I must trouble the Council to listen to one illustration of the sort of thing which goes on, taken from page 250 of Appendix C to the Commission's Report :—

"'The Subordinate Judge of Rahuri passed a decree for Rs. 19-9, including costs. In execution of the same he issued a warrant to seize property therein detailed and valued at Rs. 160.

The judgment-debtor appears to have objected; for the Subordinate Judge sent to Mr. Reid (the Magistrate) a sanction to prosecute him for resisting the attachment. Upon examination of the details of the warrant and comparison with the market prices, Mr. Reid found that, for instance, six kandies of bajri were valued at Rs. 51, the market value being Rs. 288, and 8 bullocks were valued at Rs. 32.'

"Thus, if this poor fellow had not had the pluck to stand up in defence of his rights, and even to incur criminal proceedings, he would have been simply plundered in the name of the law. This is what may, and does sometimes, happen when the warrant is duly served and returned. But sometimes it is not so. Here is a case which, for brevity' sake, I will partly summarize in my own words from the same source:—

"'Pemráj and Konirám got a decree, from the Subordinate Judge at Sangamner for Rs. 7-5-11 against Bhikaji and Rámji. Execution was entrusted to a peon of the Court, who returned the warrant with an endorsement signed by Konirám stating that he did not wish for execution. Rámji petitioned the Court that his grain, cart-wheels, and silver bracelets had been attached and handed over to Pemráj. Some enquiry followed, ending with an order, dated two months after the offence, that as Rámji had not paid the fees, his petition was rejected. The peon died before the District Judge acted in the matter. Pemráj and Konirám were discharged, on accusation of an offence against public justice, by the benefit of a doubt, the Magistrate making damaging remarks. Rámji *never got back his property*, and it is believed that Pemráj has some of it yet.'

That this case is no isolated one we may infer from the fact that, according to the latest returns available, 139,285 warrants were in one year returned unexecuted as the result of 185,293 applications for execution—that is, 75 per cent.!

"Another mode in which these decrees are engines of oppression is through the fraudulent attachment of property of third parties. The civil returns for 1872 (the latest extant with these details) show that out of 4,224 suits arising from execution of decrees, 60 per cent. were decided in favour of third parties. In other words, 2,529 innocent persons were found by the Courts to have been put to the worry and expense of a civil suit in order to defend their property from falsely-alleged liability! The costs of execution, too, are enormous, being shown by the same returns to be about 22½ per cent. on the amount recovered. What with frauds, costs, &c., some decrees are a standing property to the holder; and Mr. Auckland Colvin gives instances furnished by Subordinate Judges where, after *nine* executions, the original sum due was unabated, or even increased! Finally, the Commission ascertained that in eight taluqás only, out of the thirty-six which the four disturbed districts contain, about 3,000 decrees, of above seven years' standing and of 3½ lakhs of rupees in value, were unsatisfied.

"The Local Government are surely right in recognizing the necessity, on political no less than moral grounds, of healing this festering sore, of drying up

this source of fraud and oppression on the one side, and of misery, recklessness and deep discontent on the other. Various methods of doing so have been pressed upon them. It has been suggested that they should provide for the treatment of districts or parts of districts on the principle already applied to encumbered estates of taluqdárs and thákurs, settle the debts, pay off the amount and recoup themselves by various methods, by a rack-rent on the land, by taking produce in kind, by the farming system, &c. They have even been urged to allot an annual sum for charitably discharging the debts of individual needy agriculturists. But the Government of Bombay have rejected all these drastic remedies. 'It would be impracticable in the first place,' says Sir Richard Temple in his Minute of April 14th, 1879, 'and it would be in the second place impolitic, even if it were practicable, for any Government to undertake to deal with the debts of a whole peasantry.' What relief, then, do they wish to provide? For the extreme cases there is the Insolvent Court. But this is an extreme remedy. It involves some expense, some loss of self-respect, and even reasonable current credit, as also the liability of future earnings for a considerable period. A more simple middle path to speedy settlement is most necessary; and this the motion before us provides. It merely requires that, before execution of an old decree can be obtained, the parties shall go to the Conciliator, who will endeavour by friendly mediation to effect some reasonable and practicable compromise. That creditors will not object to this we may infer from their own statements at a public meeting held in Ahmadnagar in March last, as also from no exception being taken to the original provision for it in a memorial received from eleven leading Natives of Satára, nine of whom are saukárs.

"It should, however, be distinctly understood that nothing beyond mediation is intended. The supposition in paragraph 23 of the Select Committee's report, that it is contemplated that a 'decree should be placed on the same footing as an unproved claim,' and that 'the rights of the decree-holder under his decree should be brought in question,' are complete misapprehensions. Nothing of the sort is contemplated, and the words proposed for insertion will have no such effect. What is intended merely is that, if no settlement can be arrived at, the Conciliator shall give his certificate. The law will then take its course, and the decree in all its sanctity will be enforced. In all this I submit that there is nothing but what is reasonable, just and absolutely necessary on political grounds in the present state of the country; and I trust that the Council will uphold the recommendation of the Local Government accordingly. Any other course will rob the Bill of one of its essential provisions for the liquidation of existing debt."

His Honour THE LIEUTENANT-GOVERNOR said:—"I intend to vote for this amendment, because it seems to me that, if there are any cases in which concili-

ation is likely to be of any effect, it is in those in which a claim has been already proved, and in which all that remains is to determine the best method of satisfying it with the least trouble to the parties. I understand that the amendment takes away from the decree-holder none of the rights which he possesses under the present law; it merely provides that, before taking out execution, or before the defendant or judgment-debtor is put into the Insolvent Court, a settlement should, if possible, be made by the Conciliator; and I consider that it is perfectly reasonable and justifiable that this provision should extend to decrees which have been passed before this Act was passed, as well as to cases which may arise afterwards."

The Hon'ble MR. RIVERS THOMPSON said:—"I should be sorry to be silent on this amendment, even with the fear of my hon'ble friend Sir Alexander Arbuthnot before me. Whatever be the justice or injustice of the original decree, upon which the Hon'ble Member for Bombay has dealt with some force, the arrangement which this amendment is intended to supply is perfectly harmless and simple to carry out. The principle which permeates the whole of this measure is that, rather than go through a detailed dilatory technical procedure, every attempt should be made, not only for new debts but as regards those particular sections relating to old debts, to bring the parties together, and try by means of conciliation and adjustment to effect a satisfactory settlement of claims. If a creditor holding a decree against a debtor does not accept that conciliation; if he says, 'I hold a decree from the Court which I can execute any day I choose, and I prefer to stand on my rights,' nothing that this amendment provides need prevent or deter him from doing so. It simply means that a man having a claim, say of Rs. 250, against a debtor should come before a Conciliator before he attempts to enforce his decree; and it would be in the Conciliator's power to try and explain to him that, if the man against whom he had got a decree was in difficulties, a compromise could be effected and the matter settled in a friendly way. If the judgment-creditor did not accept this, the case would proceed in the ordinary course; and, therefore, this whole section is perfectly harmless—harmless as regards any interference with the rights of the creditor, but still opening a door for a settlement of some kind."

The Hon'ble SIR JOHN STRACHEY said:—"In regard to the merits of the question involved in Mr. Hope's present amendment I do not wish to say a word. I am perfectly satisfied to leave the case as my hon'ble friends Mr. Hope, Sir Robert Egerton and Mr. Thompson have stated it. I consider their arguments in favour of the amendment to be perfectly unanswerable."

The Hon'ble MR. STOKES said that, although he was under the disadvantage of speaking when the Hon'ble Financial Member had ruled that nothing could

really be said against the amendment, he begged to say that he would oppose it, on the broad ground that any legislative provision interfering retrospectively with existing rights was *primâ facie* unconstitutional, and should not be adopted by the legislature, unless it was proved to be, which certainly was not the case at present, an absolutely overruling political necessity or a clear public gain—such, for example, as establishing a general law of Insolvency. If the amendment were adopted, any one who had undergone the expense and trouble of obtaining a decree against an agriculturist before the proposed Act was heard of would find himself precluded from executing it unless he produced a certificate from the Conciliator. Practically that requirement would often prevent him from executing his decree at all; for if the judgment-debtor refused (as he was sure to do in many cases) to appear before the Conciliator, the decree would not be executed till the lapse of a 'reasonable' time. Well, then, the question would be, how much was reasonable? The answer was, as much as the Conciliator (who would, he feared, often be a Government official, with a bias against the saukár and in favour of the raiyat) declared reasonable. The Conciliator might not make any such declaration at all, or, as had been pointed out in one of the papers, he might postpone it till the time for presenting an application for execution had expired. He (MR. STOKES) maintained that any such provision as this would disturb absolute vested rights, against which there was no equity; and he was glad to find himself supported in that view by a gentleman of large experience,—Mr. Naylor, the Legal Remembrancer of the Bombay Government, who said:—

"When the Courts have once passed a decree, their adjudication ought to be, and has always hitherto been, regarded as final. It would be subversive of all recognized principles to allow matters which have been once finally adjudicated upon by the constituted tribunals to be reopened, especially when the functionary before whom the revision is to take place is an illiterate Conciliator. Persons who may hereafter obtain decrees with the knowledge that they will have to take them before a Conciliator before being permitted to execute them will not have so much cause of complaint as the decree-holders who obtained their decrees before the date of the Act. The retrospective effect which it is proposed to give to this section in this respect is, to my mind, altogether inequitable. It is also uncalled-for, because debtors who cannot satisfy all their judgment-debts may, by taking advantage of the insolvency-provisions of the Bill, obtain their discharge on very simple and reasonable terms."

He understood the Hon'ble Mover to say that decrees would not be reopened during the process of conciliation; but it was impossible to suppose that in an informal proceeding of the kind contemplated the Conciliator and the parties would not rake up the whole case from the beginning.

The Hon'ble MR. HOPE said:—"I have very little to say with reference to this amendment in view of the complete statements made regarding it by my hon'ble friends Sir Robert Egerton, Mr. Thompson and Sir John Strachey,

concluding with the remark of the latter, which has been fully verified by the result, that the arguments offered have been unanswerable. As I understand it, an argument is called unanswerable when no sufficient answer can be produced to it. The only answer produced is one which I must confess I heard with very considerable surprise—one which was produced on a previous occasion by the Hon'ble the Law Member. I must say that I felt considerable doubt at the time whether he brought it forward seriously, or whether he only used it on the principle that any stick will do to beat a dog with. The statement or suggestion that the decree will be reopened, made by Mr. Naylor, is simply inaccurate. The decree will not be reopened, as has been well put by the Hon'ble Members who have already spoken. The creditor will simply be asked, 'You have got a decree for one hundred rupees; will you take fifty down or not?' If he does, well and good; and if he says, 'No, I won't,' there is an end of the matter. It is quite impossible to call that a reopening of the whole case. Still less is it possible to apply to it the totally incorrect language in the report, in which it is said that the decree is placed on the same footing as an unproved claim. I cannot see, either, that it has any retrospective effect, any more than asking a man to make the promise I have just alluded to has. But suppose it was retrospective, I would merely remark that the Council must be aware that retrospective measures with reference to debts are not only passed constantly by this legislature, but a retrospective measure by which debts may be cut down by one-third of their amount was actually passed in this Council not two months ago, without a single word of objection from, but on the contrary on the motion of, the Hon'ble the Law Member himself; I refer of course to the insolvency-clauses of the Civil Procedure Code."

The question being put, the Council divided—

Ayes.	*Noes.*
The Hon'ble T. C. Hope.	The Hon'ble B. W. Colvin.
The Hon'ble T. H. Thornton.	The Hon'ble Whitley Stokes.
The Hon'ble Faiz Alí Khán.	The Hon'ble Sir Andrew Clarke.
The Hon'ble Rivers Thompson.	The Hon'ble Sir A. J. Arbuthnot.
The Hon'ble Sir E. B. Johnson.	
The Hon'ble Sir J. Strachey.	
His Excellency the Commander-in-Chief.	
His Honour the Lieutenant-Governor.	
His Excellency the President.	

So the Motion was carried.

The Hon'ble Mr. Hope then moved that in section 38 the words "other than an officer of revenue or police" be omitted.

He said :—"My Lord, these words are an interpolation of the majority of the Select Committee, intended, they say (paragraph 22), 'to guard against the dangers adverted to by the Hon'ble Sayyad Ahmad in his speech.' What the Hon'ble Sayyad Ahmad said was this :—

"'No doubt, a revenue or a police officer could bring influences to bear on creditors which would induce them altogether to forego their claims; but I need hardly express my conviction that the Government of India would altogether discountenance the exercise of any such influence; and I have no doubt the Council, in order to avoid even the apprehension of its exercise, will see fit to introduce a provision in the Bill prohibiting the appointment as Conciliator of any officer exercising revenue or police functions.'

"Now, although no allusion to this subject was made in the letter addressed to the Government of Bombay on the introduction of the Bill (Paper No. 3), these remarks attracted the attention of that Government; and in their reply they stated that 'it is not desirable to exclude from the office of Conciliator all revenue-officers, some of whom are capable of exerting a very intelligent and beneficial influence in that capacity.'

"Of the interpolated words, I would premise that they are, in the first place, unnecessary. No reasonable persons, either in this Council or out of it, can, I should hope, seriously suppose that the Government of Bombay would not be as anxious as themselves to discountenance all exercise of undue influence by Conciliators, whether they be officials or non-officials. There can be no doubt whatever that any evidence of such misconduct would be promptly followed by deprivation of office, and that, if the offender were an official, he would incur the severe displeasure of Government. The words, however, are not merely unnecessary but offensive. They cast beforehand, without a shadow of proof, an unworthy stigma upon the great revenue or executive department by which the bulk of the administration of this empire is carried on. Revenue-officers have in numerous capacities—as magistrates, as surveyors, as municipal councillors, and what not—to intervene in all sorts of disputes between man and man; and in these their general success and their high character are equally undeniable. The words, again, are unprecedented. There is not, as far as I can remember, any page of the Indian Statute-book containing a deliberate expression of want of confidence and an exclusion such as this. The exclusion, moreover, may be most prejudicial, as the Bombay Government point out. It is not likely that in practice revenue-officers, who have much else to do, will be largely employed as Conciliators; but occasions may easily arise when they alone can effect what is wanted. If, for instance, meetings such as that at Ahmadnagar, to which I have alluded, should result

in leading bankers expressing their willingness to compound with all their debtors, a person of considerable position, intelligence and tact could alone carry the transaction through. Why, then, should the aid of such a person, if the parties desired it, be denied merely because he happened to be a revenue-officer? I have known individuals, both European and Native, whose mere appearance on the scene was sufficient to pacify and give confidence to an angry countryside. Of police-officers I need say nothing, because no one dreams of making them Conciliators. But, finally, I would urge that where a great and experimental measure, such as that before us, has to be introduced, it is not only fair and reasonable, but indispensable to success, to leave the Local Government free to choose its own instruments. The Local Government have expressed their views and wishes very plainly in this instance; and I rely on the Council to support them."

The Hon'ble MR. THORNTON said :—"I shall vote for this amendment, because, assuming that special Courts of Conciliation are to be established, there appears to me to be no reason whatever why the Local Government should be restricted in its selection of Conciliators."

The Hon'ble MR. COLVIN said :—"In speaking upon the amendment which is now before the Council, I cannot help remarking that the statement which we have heard to-day, that the present Bill is only a local Bill, appears to me to require very large qualification. It is true that the Bill will only be of local application in the first instance; but I doubt if its future consequences will be merely local. If the provisions which this Bill contains are considered to be sound and suitable for relieving agricultural distress in the Dekkhan, it is not easy to see the grounds upon which the enactment of a similar measure could be refused, if asked for, in order to relieve a like agricultural distress in other parts of the country. It has been said no doubt that the measure is a purely tentative one, and that the experiment need not be repeated if it is not successful. I should be very glad to think that this was so. It seems to me more probable that the admission that an experiment is being made may be lost sight of, and that the results of the measure will not be waited for, but its success assumed. Before the year is out urgent applications will perhaps be made for a trial of the same experiment elsewhere; and what is now called a local and tentative law may grow into one of general application, and be treated as if it were a certain specific for the difficulties of the agricultural community everywhere.

"The changes of practice, too, which will be made by the Bill, so far from being in matters of mere technical detail, introduce new principles of very great importance. Much stress has been laid upon the necessity of deferring to local experience upon these points. It could easily be shown, I think, that in

the Bill as it stands general experience has been quite sufficiently subordinated to local knowledge. For instance, it is a well-known general principle of law and of common sense that in all suits the best evidence should be obtained. The Bill, on the contrary, insists that the Courts shall go out of their way to look for the worst. It directs them to leave the comparatively safe ground of ascertained and recorded facts, and to trust in preference to the vague, conflicting, and often interested testimony of witnesses deposing to remote and doubtful transactions. They are to do this, moreover, with the express object of discovering fraud where no one has alleged it. Again, it is a matter of almost universal complaint that in India the land is changing hands, or being stripped of all profit to agriculturists by the pressure of their debts. The Bill, if it is passed, will make it almost impossible for the raiyats of the Dekkhan to borrow money at all except on a mortgage of their lands; for it will leave them no other security which a lender can safely accept. It has generally been held, too, that speedy justice is a good thing. Well, under the amendments which have been carried to-day, it is true that the delay caused by appeals has been cut off; but, on the other hand, the Bill will interpose an indefinite delay for the purpose of conciliation before a suit can be taken into court. For, as far as I can judge from its wording, the delay which a Conciliator may cause, if he chooses, has no limit. Further, it has commonly been thought that people should be free to make their own bargains, and that bargains, when made, should be kept. The Bill declares that it is the duty of the Judge, notwithstanding any agreement made by the parties, to alter and arrange the terms of their transaction for them, and, where interest forms part of a bargain, to allow as much or as little as he may think reasonable. The natural effect of this last provision will be to prevent persons from ever foreseeing the result of any transaction in which they may engage. I think that great harm may result from this. I am no advocate for usury-laws; but I would rather have seen a fixed limit to interest prescribed by the law. In that case business could have adjusted itself accordingly, and the borrower and the lender would have been able to make their arrangements. But nobody can foretell what rate of interest may appear reasonable to each individual Judge. The conditions, therefore, on which any loan is made must always remain uncertain; and constant uncertainty is a risk that people engaged in business cannot afford to run. I have enumerated some of the points upon which the Bill makes great changes because we have been charged, by implication at least, with a want of proper deference to local authority. My own doubt is whether we have not gone too far in allowing it to override general experience in such important matters. I believe that we might more justly be charged with having given to it too much weight. No doubt the Bill, taken as a whole, ought to have the effect of diminishing the raiyat's means of obtaining credit, and of curtailing the large powers which the existing law confers upon creditors; and that

these are good ends to aim at. It is true also that the power of the Government in this country is so great that it can hardly ever fail to attain, in part at least, any object towards which it seriously directs its energies. The Judges, too, by whom the law must be carried into effect, and who will be confronted by the practical difficulties of doing so, may be trusted to amend the operation of much in it which (as I believe) is otherwise likely to be purely injurious. Nevertheless I cannot but feel great misgivings as to the prudence of making such very large concessions as have been made to local experience.

"I turn, now, to the particular amendment which is under the consideration of the Council. The question at issue is whether officials should be eligible for the post of Conciliator; and it is a most important question in its bearing upon the probable result of conciliation. I think that there is an excellent reason for not entrusting such duties to any officials, even if they be only revenue-officials. Conciliation by such persons is very apt to degenerate into improper pressure. In France, where, as I understand, the system of conciliation originated, no officer of the Government is allowed to discharge these functions; and it is an avowed part of the system that they should not be so employed. I believe that the intended change of procedure is much more likely to succeed in this country if we follow the French practice on this point. As to selecting police-officers for such a post, I can conceive nothing worse or more objectionable. I suppose that in all countries the subordinate officers in the police force must comprise a good many men of doubtful character. It can scarcely be otherwise; and I do not intend to say that the police force in this country necessarily includes more of them than is the case elsewhere. But I think that a man holding an office which makes him the keeper of the door, as it were, through which every claim must pass before it goes into court will be strongly tempted in all countries, if he is not an honest man, to make money by it. If a police-officer chooses to exert undue influence, there can be little doubt of his power to do so. He can summon, arrest, and search houses. If he is unscrupulous, he can even fabricate a false charge against an innocent man, and possibly have him convicted and imprisoned for years. I think that there can be no Magistrate in this country who has not seen attempts of this kind made, and few Magistrates who would care to affirm that such attempts have never been successful. It should not be possible that men who can bring such influences to bear upon suitors should be appointed Conciliators.

"In conclusion, I have only to say that, as the Bombay Government has never expressed any desire to appoint police-officers as Conciliators, and as we have been assured by my hon'ble friend the Mover that there is no intention of doing so, I cannot see any necessity for amending the Bill in the manner which is proposed."

The Hon'ble Mr. Stokes said that he had only one observation to make; and that was that he did not believe that the insertion in the Bill of the words "other than an officer of revenue or police" would be regarded as setting a stigma upon the members of those services. They were not so morbidly sensitive. By the 121st section of the Code of Criminal Procedure police-officers were expressly prohibited from taking confessions; and he had never heard that their feelings were hurt by this suitable prohibition. In this country we all knew how very desirable it was to keep the administration of the law free from any suspicion of executive influence; and he was strengthened in that opinion by the fact that the insertion of words excluding the police was in accordance with the opinion of our wise and experienced Native colleague—the Hon'ble Sayyad Ahmad Khán.

The Hon'ble Mr. Rivers Thompson said:—"I am not going to follow my hon'ble friend Mr. Colvin in his interesting review of the principles of this Bill, because it appears to me that the greater portion of those questions have been already disposed of, and in my opinion been rightly disposed of. The principle which I contend for as regards this amendment is that, in carrying out and giving effect to legislation of this kind, the greatest freedom of action must be left to the local authorities, and that the Local Government might quite well say that, if their hands are tied as to the agents by whom the Bill is to be carried out, they had better give up attempting to carry it out at all. In that view I am quite prepared to support the Hon'ble Mr. Hope in this amendment. I think myself that it would be improved as an amendment if we were only to omit from the section the words 'revenue or' so as to make the exclusion run 'other than an officer of police,' because the only evil contended against is that officers of police might abuse their powers of arrest, and intimidate by an official pressure, which would be injurious. I cannot conceive, however, in what way it would be injurious if the Local Government were perfectly free to employ revenue-officers in discharging the functions of a Conciliator. Their ordinary duties amongst the people would especially qualify them for such an office."

The Hon'ble Sir John Strachey said:—"My hon'ble friend Sir Alexander Arbuthnot said to the Council just now, and I think with great truth, that, although it was the duty of this Council to carry out its own views in matters in which important principles were involved, it was equally its duty not to interfere in mere matters of detail, on which the Local Government had expressed a strong opinion. Now, in spite of the remarks which have fallen from my hon'ble friend Mr. Colvin, I can conceive no matter which is more plainly a matter of detail than this. We are not now considering whether the establishment of Courts of Conciliation is a good or a bad thing. That

they are to be established is admitted by the Bill as it stands. We are simply asked whether the Local Government shall, or shall not, be at liberty to choose its own agents for this work as it pleases. It seems to me impossible to doubt that the Local Government must be the best judge of such a purely local question as this; it is infinitely more competent to judge than we are.

"In regard to the question of appointing police-officers to act as Conciliators, I understood my hon'ble friend Mr. Hope to say—and I hope he will correct me if I am wrong—that it was really unnecessary to talk about the appointment of police-officers, because it had never entered into any one's head to appoint police-officers as Conciliators. I quite agree with my hon'ble friend Mr. Stokes in not attaching much importance to the consideration that, if we mention police-officers, we shall be placing a stigma upon them. But if we put in words forbidding the Local Government to appoint a police-officer, we throw a stigma on the Local Government. Although it is highly improbable that a police-officer will ever be chosen as Conciliator, still it is conceivable that under some circumstances it will be found desirable to appoint such an officer and if the Local Government should come to the conclusion that it is proper to do so, I think it should be allowed to exercise its own discretion in the matter.

"With regard to the exclusion of revenue-officers from this duty, I should like to say a few words. If these districts of the Dekkhan are similar in this respect to those parts of India with which I am acquainted—and I have seen no reason to suppose that they are different—then I say that, of all the men that could possibly be chosen as Conciliators in the class of cases with which we have to deal, the revenue-officers would frequently be the best. They know far more about the agricultural classes than any other officers of the Government. Their duties bring them into intimate relations with the people; and the amicable settlement of disputes and the prevention of litigation are, I may say, objects which, without any fresh provisions of law, a good revenue-officer already considers to fall within the sphere of his duties. I myself, more than twenty years ago, advocated in the provinces of Northern India the establishment of Courts of Conciliation; and the opinions which I held then I hold still. I believe that Courts of Conciliation might be established in the North-Western Provinces with very great advantage. If, when advocating the establishment of those Courts, I had been asked 'Who can you appoint as Conciliators?' or if I were asked that question now, I should reply we shall be able constantly to find admirable Conciliators in our revenue-officers, who are, I may say, the natural protectors of the people. I am the last person to doubt, or to deny, the immense improvement which has taken place during the last twenty years in the Civil Courts of India. These Courts have been immensely improved, both in the character and in the acquirements of the Judges, and by the very great simpli-

fication of their procedure. We cannot be too grateful to the eminent men by whom these benefits have been conferred upon the country; and I hope that my hon'ble friend Mr. Stokes will not think me impertinent if I add that there is no one to whom we owe a larger share of that gratitude for making the procedure of our Courts simple and rational than we owe to him. But, in spite of this improvement which has taken place in the Civil Courts, it still remains as true as ever that every measure by which we can keep the people out of the Courts will be a great blessing to the country. It will be highly interesting to watch the results of this first experiment in India in establishing Courts of Conciliation, which have proved so highly useful in some other countries. It would be a great pity to interfere in any way with any of its chances of success; and I believe we should be so interfering if we were to put any check on the power of the Local Government to choose its own instruments.

"I have only one other remark to make with reference to an observation which fell from my hon'ble friend Mr. Colvin. He said that he believed that the only country in which this system of conciliation had been tried was France, but that in France no officials acted as Conciliators. Now, I am sorry to tell him that he has made a great mistake. The truth is that no one who is not an official can act as a Conciliator; all the *Juges de Paix* in the country are Conciliators, and nobody else. So my hon'ble friend has given an unfortunate illustration in support of his argument."

The Hon'ble SIR EDWIN JOHNSON said:—"I would merely remark that if this amendment is allowed to stand in its present form, I shall have to vote against it; for the objections which have been assigned to the appointment of a police-officer as a Conciliator will still remain. I quite agree in the remarks of my hon'ble friends Sir John Strachey and Mr. Thompson as to the advantage of having revenue-officers in the position of Conciliators; but I regard it as highly inexpedient to allow police-officers to hold that position, or even to be considered eligible to hold it. I have no doubt that a large number of police-officers would be found perfectly capable of discharging the duties of such an appointment in a very creditable manner; but, irrespective of other considerations, I think that, in justice to the whole body of the police, they should be exempted from the possibility of being placed in a position in which they would be liable to misrepresentation. If my hon'ble friend Mr. Thompson's proposal is agreed to, I shall be willing to vote for the amendment; but if not, I must go against it."

The Hon'ble SIR ALEXANDER ARBUTHNOT said:—"I cannot say that I attach very great importance to the particular words to which this amendment relates. Those words would not have been inserted in the Bill as revised by the Select

Committee, had it not been that our attention was pointedly drawn to the matter by our very able, intelligent and experienced Native colleague—Sayyad Ahmad. It was his remarks that led the majority of the Select Committee to consider it desirable that officers of revenue and police should be expressly excluded from the office of Conciliator under this Bill. I must say that, while I do not agree with my hon'ble friend Mr. Colvin in some of the observations which fell from him with reference to that part of the Bill that relates to the subject of conciliation, which appears to me to be the essence of the reform contemplated in the Bill, and from which, though I am not prepared to say that I am extremely sanguine, I still hope that some benefits may be obtained, and think that the experiment is one which is amply deserving of a trial, still I agree with my hon'ble colleague in all that he has said as to the expediency of excluding officers possessing the great official authority and the great influence in the eyes of our Native fellow-subjects which is possessed not only by our officers of police but by our officers of revenue. As a matter of fact, I have been accustomed to regard all officers of the Revenue Department in the Presidency in which the greater part of my service has been passed as far the most influential and the most powerful officers we have. They have often infinitely more power than the officers of police. The remarks that fell from our Native colleague Sayyad Ahmad about leaving no opening for the appointment of officers of police are, on grounds of principle, unanswerable. I think that, as a matter of fact, the objections to permitting officers of revenue to engage in this duty are very great; but I for my part shall be quite prepared to agree to the compromise which has been suggested by Sir Edwin Johnson, and which, I think, meets the views of some of my other colleagues, to limit the exclusion to the police."

The Hon'ble Mr. Colvin said:—"My Lord, I should be glad to say a few words by way of explanation, if I may be permitted to do so. My hon'ble friend Sir John Strachey has corrected a statement of mine regarding the office of Conciliators in France. I have to thank him for that correction if my remarks were generally understood to apply to judicial as well as executive officers. I know of no objection to the appointment of judicial officers as Conciliators. What I intended to say was that no officer invested with executive authority was ever appointed to be a Conciliator in France; and the fact is so. Such an appointment could not, I believe, be made.

"I may take this opportunity of correcting an error which my hon'ble friend himself has made in speaking of conciliation as a novel experiment in India. It appears that Courts of Conciliation have existed under the law in Madras since 1816."

The Hon'ble Mr. Hope said:—"I need not trouble the Council for more than two or three minutes on this matter. I said that no person, so far as I

was aware, dreamt of making police-officers Conciliators, and therefore while, on the one hand, the Council would be fully justified in omitting the words proposed, on the other I do not see any great objection to leaving them in.

"There is an inaccuracy which seems to me worthy of notice in the remarks of the Hon'ble the Law Member. There is no analogy whatever in the parallel drawn by him between the case of excluding police from taking confessions and the one before us. Originally they used to take confessions; but when in the year 1860 the whole of the police in India were reconstituted—a work with which in my own Presidency I had officially much to do—one of the great things we had to do was to draw distinctly the line between police functions and magisterial functions. At that time Magistrates used to be policemen; but in the course of the reorganization that ensued these two functions were divided. The police were confined to what was strictly their own line of business; the recording of confessions went to the Magistrate. There was of course no stigma in this; but a deliberate exclusion like the present was different. However, I am perfectly willing, if the Hon'ble Sir Edwin Johnson and the Council think my amendment should be limited to the exclusion of the words 'revenue or'; and, with your Lordship's permission, I will alter it to this effect:—

"'That in section 38 the words "revenue or" be omitted.'"

The Motion, as thus amended, was then put and agreed to.

The Hon'ble MR. HOPE next moved that the following clause be added to section 7 (namely):—

"In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do."

Court to examine defendant as witness.

He said:—"My Lord, the Bill proposed by the Bombay Government provided against the hearing of suits in the absence of the defendant—a practice which has reached enormous proportions in the Bombay Presidency, and which is proved by the fullest evidence to be often productive of gross injustice. In my introductory speech I said that the proportions in the four districts ranged from 60 to 74 per cent. in 1876, and from 57 to 66 per cent. in 1878. But this was for all suits. In money suits only Mr. Auckland Colvin shows (Minute, p. 30) that it is from 93 to 97 per cent. The Bombay section was substantially reproduced as section 9 of the Bill introduced; but the Select Committee have cut it out altogether. From paragraph 4 of the Report it would seem that they are impressed by the obvious hardship of forcibly dragging a man away from his home and his cultivation, perhaps at a season when every day is of importance to him, merely with a view to 'compelling him to appear in a suit to which he has no defence.' To this it may be answered

in limine that, as every man is *now* by the law of the land liable to be so dragged, under arrest if necessary, in order to give evidence in the affairs of other people with which he has no concern whatever, there can be no special hardship in obliging him to come up about a matter of primary importance to himself; and as to actual arrest, on the hardships and indignity of which some sentiment has been expended, this penalty is no more likely to be incurred by defendants than by witnesses, of whom arrests are almost unknown. The knowledge that a summons must be obeyed readily ensures attendance. On the other hand, however, the necessity for a defendant's presence is, if possible, greatly enhanced by the present Bill. I do not see how it will be possible for a Judge to comply with the requirements of section 12, to receive the defendant's admission, and weigh it so as to decide whether it is true and made with a full knowledge of his legal rights; to go into the history and merits of the case, to ascertain what defence a man may have, even though he is not aware of it, and to follow up the items of the account, unless the defendant be before him."

The Hon'ble SIR ALEXANDER ARBUTHNOT here said that he, and he believed those who had hitherto agreed with him, would not oppose this amendment.

The Hon'ble MR. HOPE said that in that case he had no further remarks to make.

The Motion was then put and agreed to.

The Hon'ble MR. HOPE then moved that the Bill, as amended, be passed.

He said:—"My Lord, in making this motion I wish, on the one hand, to give certain explanations and comments on what it contains, which I hope may be useful to those entrusted with its execution and to the public, as also, on the other, to make remarks on a few important matters not included in it. I shall do so, as far as may be, in an uncontroversial spirit, and the views I express may be taken simply as my own, and not necessitating any rejoinder from Hon'ble Members who may in any instance happen to dissent from them.

"With respect to section 2, doubts have been expressed by the Puna Sabhá, in an able and comprehensive paper which has on some points been most useful, whether the definition of 'agriculturist' covers the important class of agricultural labourers; but it is held by the Hon'ble Law Member that it does so, as of course it is intended to do.

"To section 9 it has been objected that only a defective record, and in some cases no record, is provided for; that Judges will consequently take down just what they choose, and that superior Courts will have nothing to go upon. This is not strictly accurate, since even in cases not exceeding Rs. 10 in

amount or value a record of the substance of the evidence is obligatory. And it should be remembered that what is here provided merely follows what is the existing law, either in non-appealable civil cases or in summary criminal trials by a Magistrate or Bench of Magistrates, and in certain trials before a Presidency Magistrate. A mode of record which is found not inappropriate for cases where two years' imprisonment and Rs. 1,000 fine may be inflicted is surely sufficient for the civil suits to which our Bill relates. While thus touching on procedure, I would take the opportunity of repeating and explaining what fell from me when introducing the Bill. I then said that, in view of the fact that 85 per cent. of all suits in British India are for sums under Rs. 100, and 44 per cent. for sums under Rs. 20, 'I cannot but feel, and I think the people feel too, that our Civil Procedure Code, with its six hundred and fifty sections, and all that they involve, is in minor cases a burden almost too heavy to be borne. I trust that the day may come when not only Dekkhan raiyats but all India will obtain some relief in this respect.' I do not dispute that our Civil Procedure Code, whenever its six hundred and fifty sections, just amended as they have been in some one hundred and seventy instances, and still requiring amendment as they do in perhaps as many instances more, shall have been recast with patient judgment into one work, fit to take a permanent place beside such Codes, as the Indian Penal Code and Code Napoléon, may then be a suitable machine by which to regulate litigation in which great interests are at stake. But for *minor cases*, of which alone I spoke, it is, and ever must be, an intolerable burden. However refreshing to the legal intellect may be the creation and solution of subtle distinctions and dilemmas, and however noble it may seem to argue and judge with the same care whether five rupees or five lakhs of rupees are involved, the world that has to toil and live can neither wait nor pay for such entertainment. That world in England has long since settled the question by establishing County Courts, which give such satisfaction that their sphere has received, and seems likely still to receive, considerable extension. I will repeat my regret that a material simplification of procedure with a view to saving delay and expense has not been found feasible in the present Bill: the rejected sections of the original draft were perhaps not sufficiently thorough to raise the issue with advantage. But, though we seem to have in India an unlucky knack of introducing as improvements what is being abandoned in England as intolerable, I do not despair of the reform I desire being in the end successfully achieved.

"Regarding sections 12 to 15 of the Bill, I also then doubted whether they expressed intelligibly or would secure effectively the action needed for 'going behind the bond.' The objections of the Bombay Government were more fully and emphatically pronounced. In consequence of these I am glad to

say that a very great improvement has been effected. But I much regret the absence of an authorization of the Court to award, with or without the aid of a jury or assessors, an equitable sum to the plaintiff instead of non-suiting him, in cases where the Court is satisfied that some money has been lent, but, through the want of books or other evidence, the actual nature and extent of the transactions are doubtful, and the precise sum due cannot be proved. This power has been shown by experience under the Taluqdárs and Thákurs Acts to be most useful in saving the creditor from unreasonable loss, and would have tended to give confidence to the money-lending class. Still, although in this and in some other points the views of the Bombay Government regarding these sections may not have been fully met, I have every hope that the latter will now be found workable and beneficial, especially if the following wise caution of Mr. Justice Maxwell Melvill be kept in view by our Judges:—

"'I can only express a hope that, in making the experiment, the Government will select men of moderate views, who will not give too loose a rein to the natural feelings of sympathy with the agriculturist and antipathy to the money-lender. These men will, in future, have to determine what rate of interest is reasonable in transactions between the money-lender and the agriculturist; and they will fail to do justice if they forget that the money-lender has many bad debts, that as high interest means bad security, so bad security means high interest, and that the money-lender's security is now more than ever weak, seeing that he cannot touch his debtor's person, nor his house, nor his clothing, nor his cattle, nor (unless the debt be specially secured) his land.'

I may add, incidentally, that it should be observed that chapter III applies to all suits and proceedings to which agriculturists are parties, irrespective of their amount or value.

"To pass on to the question of agriculturists' accounts, it does not seem to have been fully perceived in some quarters that, while sections 65 and 66 ensure to the debtor a statement of his account from the creditor's point of view, section 16 is designed to enable him to get his real liability determined under the provisions for going behind the bond. Section 19 now expresses correctly what was proposed in the Bombay draft Bill: the objections taken to it as it stood when introduced arose merely from accidental oversights in the drafting.

"Considerable criticism has been directed against section 22, which exempts land from attachment and sale in execution of decrees, unless it has been specifically pledged. In my introductory speech I sketched the position of the land-sale question, and explained the reason for the absence from the Bill of any attempt at a final comprehensive settlement of it, and for considering the restriction of sale to specifically-pledged land to be equitable. In the decision of the question I had taken no part, as this restriction had been proposed by the Bombay Government, and accepted by the Government of India

and the Secretary of State, before my connection with the Bill commenced. I ventured, however, to express my views as follows:—

"'I must confess to some misgivings as to how the exemption may work in practice. The money-lender may everywhere make the execution of a bond, laying on the land all his existing unsecured advances, an indispensable condition of further accommodation. At the same time, the exemption rests as to the past upon a perfectly intelligible and reasonable basis, while as to the future the proposed village registration will at least ensure that every raiyat when he pledges his land shall understand what he is doing, and insolvency will open to him a loophole of escape when unreasonably pressed by an extortionate creditor, if he prefers that alternative.'

"My doubts have now been more than echoed by Mr. Justice Maxwell Melvill and Mr. Justice West, the former of whom predicts that loans, excepting on mortgage, will soon be unknown; while the latter, concurring in this, adds that the mortgagee will, by the operation of the Bill, be driven on to become a purchaser, and the raiyat will have no alternative but to acquiesce in sale. Here I would only observe that the most demonstrably correct economic calculations are liable to be defeated by moral and sentimental causes, and that it by no means follows that mankind will do what logically they ought to do. It may be that the affection which the raiyat bears to his land will lead him to defeat his creditor by insolvency; that the competition amongst money-lenders, which the Dekkhan Riots Commission report, will check the exaction of landed security; and, best of all, that the difficulties of borrowing will tend to keep the raiyat's transactions within his means. The issue can only be known upon experiment. But it seems clear that the course which has been adopted was the best under the circumstances. No solution of the land-sale question generally admitted to be satisfactory is forthcoming. Mr. Justice Melvill candidly admits that he has not got one to produce; the reservation to the raiyat by 'a kind and impartial authority' of the 'minimum of land' requisite for 'a decent subsistence,' which Mr. Justice West advocates, has been severely criticized, directly and indirectly, by very competent authorities. To have postponed relief to the Dekkhan till this question was settled for all India would have been little less than criminal; to have made no attempt to check the rapid alienation of raiyats' lands, by a method equitable in itself and offering the chance of even a limited success, would have been neglectful. At the same time, it is also clear that the land-sale question cannot be put off much longer; and I earnestly hope that what has been written, said and done upon this Bill may accelerate its solution.

"I must now notice the important subject of management by the Collector, provided by clause 2 of section 22 and by section 29. In my introductory speech I said that—

'compared with what we mean to compel a man to *pay*, the question of what we shall hold him to owe sinks into insignificance'; and, again, that 'we cannot justly and reasonably

legislate for the summary relief of the debtor from unjust and extortionate claims, unless we also give to the creditor full and effective aid in obtaining all that is fairly due to him and reasonably recoverable. A creditor's difficulties when he has got his decree should be reduced to a minimum. If we make the decree a just one, it should be effectively enforceable. Without ample provision on this principle, the destruction of the raiyat's credit or his bondage to secret and extortionate agreements must ensue, and all our well-intentioned interference will do harm instead of good. With such provision, the measure will not injure the raiyat's credit, but improve it.'

"In short, I look upon this provision as the keystone or test-point of the Bill. If it works well, the raiyat's credit will be secured on a satisfactory basis; if otherwise, his borrowing, even for reasonable purposes, within the limits of his true means will become most difficult, while the alternatives of absolute non-transferability of land, or eviction and a poor-law, will stare us in the face. I note, on the one hand, that the Puna Sabhá, Mr. Moore and Mr. Naylor doubt the Collector's power to manage vast numbers of small holdings, while the Commissioner and the other two Collectors consulted express no misgivings on the subject. I myself consider that there need be no fear of failure, provided it be from the first recognized that the duty is important and difficult, not to be performed by mere perfunctory orders, passed on from the Court to the kulkarní through an intervening chain of little-heeding functionaries. Success will, I anticipate, lie most frequently in a pretty close adherence to the system in Native States, and to the provisions for security and recovery still extant in our law, though of late years little resorted to. If the raiyat be retained as cultivator wherever possible,—if a reasonable rack-rent be imposed, personal security exacted, precautions taken against making away with the crop, aid given when wanted in securing a fair price, and payment required at the time means are forthcoming, I see no reason why satisfactory results should not be attained. But careful supervision by Assistant or Deputy Collectors and Mámlatdárs will be indispensable; and possibly the appointment of a special officer for a few months to start the system in the four districts might be advantageous. These, however, are details which will, I doubt not, receive full attention from the Local Government.

"The section which enabled the Court to make over moveable property to the creditor at a valuation has been struck out by the majority of the Select Committee. The fact that attached articles of property are constantly sold by auction for a mere song, and often collusively so bought by the creditor, is established beyond dispute. On the section the Puna Sabhá remark:—

"'We regard the provision as salutary. Forced sales of property under all circumstances prove very ruinous to the debtor classes. We would only recommend that the assessors who are to appraise the property should not be appointed by the Court,' &c.

Messrs. Stewart and Moore approve of it; Mr. Naylor ably defends it; Mr. West apparently objects merely to its present form; and finally, the Bombay Gov-

ernment, after considering the remarks made in Council, are clear for its retention. Under these circumstances, I am wholly unable to comprehend why, instead of being amended, as it easily might have been, it should have been expunged. On a matter of this kind, and considering the strong favourable evidence, I think more deference should have been paid to the views of the Local Government; and in this case, as in that of summary equitable awards to which I have already alluded, I would have moved the insertion of an amended section but that I had, unfortunately, to trouble the Council with so many other amendments of even greater importance.

"I am glad to say that section 35, limiting the powers of Subordinate Judges in the punishment of fraudulent debtors, to which I was opposed, has been expunged. The provision in section 33 for an appeal against their sentences is a step towards the separation of punishment for fraud from insolvency, which I advocated. But the punishment of concealment and fraud in the creditor, for which the Bombay draft provided, is still omitted, and must now await the further improvement of the law of Insolvency throughout India, which cannot be long deferred.

"A consideration of the chapter on Insolvency, together with the sections about going behind the bond, suggests the interesting question as to whether their combined effect may not be to destroy credit, put a stop to money-lending, render the revenue irrecoverable and bring the country to a deadlock. On this point Mr. Justice Maxwell Melvill, who, I hope I may say without offence, has treated the problem forced upon us with equal moderation and statesmanship, makes the following remarks:—

"'I presume that the Government is satisfied that the effect of the measure will not be to destroy the raiyat's credit altogether, or to induce the money-lenders to close their shops. If this should not be the result, but if, on the contrary, it should turn out that after the agriculturists have been relieved of their existing debts on the easiest possible terms the money-lender will go on lending, not on his own terms but on such terms as may, in the uncertain future, be deemed reasonable by the Judge for the time being, it would indeed be a consummation devoutly to be wished. Regard being had (to use the phraseology of the Evidence Act) to the common course of natural events, human conduct and public and private business, I should be inclined to fear that such happy results as I have last contemplated are not likely to ensue; but it must be admitted that Natives often disappoint our most reasonable expectations, and that the consequences of such a measure as that which is proposed can only be determined by experiment.'

"What Mr. Melvill himself anticipates is tolerably evident; though he qualifies any conclusion very much in the way I myself have done when speaking of the possible effects of the restriction on the sale of unpledged land. But, perhaps, I ought to offer some explanation of the grounds on which, subject always to the same qualification, the Government may be held to be justified in

anticipating that the dire results just alluded to may not come to pass, and, consequently, in persevering in the measure before us. It is a truism that a thing is worth what it will fetch, and *per contra* that in the long run, temporary disturbing causes apart, a thing will always fetch what it is intrinsically worth. Now the Bill does nothing to diminish the intrinsic value of land, but rather the reverse. The value of land depends, at bottom, on the net produce, or surplus after three deductions, for the cost of cultivation, the subsistence of the peasant and his family, and the Government demand.* Land is worth as many years' purchase of this net produce as correspond with the current rate of interest. And this rate of interest ultimately depends upon the facility of recovery. Now our Bill does not alter the Government demand or, consequently, the net produce, but it increases the facility of recovery. It must, therefore, increase the raiyat's *sound* credit, instead of diminishing it. I will make my meaning clear by illustration. Suppose a raiyat's holding yielding gross produce worth Rs. 100, of which Rs. 50 go for the three deductions I have just named, leaving Rs. 50 as net produce or margin on which the raiyat may borrow. In view of the provision in the Bill for seven years' management of unpledged lands, the money-lender would be justified in lending on a money bond Rs. 180 if the rate be 20 per cent., Rs. 228 if it be 12 per cent., and Rs. 252 if it be only 9 per cent. Which of these rates he will adopt, or whether he must exact a higher rate still, obviously depends on his chances of getting paid. But these chances are greatly improved by the Bill; for the raiyat will strive to pay punctually rather than come under the management of the Collector, and the Collector's management (if efficient, as it *must be made*) will make loss more improbable still. Notwithstanding all fair allowance for risks, lower rates will thus prove as remunerative as the present high ones. For a loan on mortgage, the principle of calculation and the advantage are the same as for a loan on personal bond; but in the end there is this difference, that in the latter case, if the saukár lends beyond the limits, he will lose his money, while in the former, if the raiyat borrows beyond them, he will lose his land.

"All this, it may be said, is very well in theory, but in practice the conditions of advances depend far more upon 'the degree of simplicity in the borrower and of rapacity in the lender than on anything else'; and to this existing uncertainty you have added the fresh one as to what rate of interest each individual Judge will think reasonable. I reply that the former uncertainty will be diminished by the Bill; and that the second will prove more imaginary than real. There will be far less temptation to extortionate bargains

* I of course ignore such extraneous value as the land may now possess through the means a hold on it now gives the creditor of commanding the labour of the debtor and his family and other illicit advantages.—(*Dekkhan Riots Commission Report, page 60.*)

and frauds, and far more risk in them, now that the whole history and merits of the case are to be laid bare in Court. And the provisions for management and recovery by the Collector, standing behind all agreements, will reduce the factor of uncertainty in credit which arises from individual character, and will assist the Courts in gradually establishing rates of interest varying within but a moderate range. Their decrees will thus in time afford the advantage, without the well-known evils, of usury laws, of which Mr. Justice West has well observed in his pamphlet on 'The Land and the Law,' that 'they set up a standard, and gave fixity to men's vague ideas of what might reasonably be asked for the use of money in those numerous cases in which the loan partook but slightly of the character of a true mercantile transaction.'

"While thus contending that the Government are justified in believing that the ultimate effects of the Bill will prove beneficial, I do not conceal from myself for a moment that a trying time of transition must intervene before all parties have understood and settled down to their new relations. It is to be fully expected that difficulties between debtor and creditor will arise in many individual cases, and even in villages or taluqás generally, and that their effects may appear in the recovery of the land-revenue. But if judicial and revenue officers alike strive to remove misconceptions and fears; if the former are even-handed and temperate in their judgments, and the latter efficient in their management of attached land; and if, I venture to add, the revenue demand can be so timed and adjusted as not to drive the raiyat to the saukár, even temporarily, in order to meet it—then I believe that all trouble will be soon and safely tided over. That the saukár will permanently cease to lend, there need be no fear whatever. The raiyat is just as likely to cease to cultivate. The raiyat is as necessary to the saukár, who can only employ his capital in agricultural dealings and banking, as the saukár is to him. The pair will not sit down and starve together, with a bag of money between them!

"Another large question, which I cannot pass over without remark, is that of the novel provisions for Village-Munsifs and Conciliators. It has two branches—the one relating to their *personnel*, and the other to their functions. I will first speak of the *personnel* available for each office. As to Village-Munsifs, it will have been gathered from what I said in my introductory speech that I did not expect that more than a patel here and there would be found qualified to be a Village-Munsif. If the suggestion which I put forward in 1863, in 1867, and again in 1871, that after a reasonably distant future date no person should be appointed patel who had not received a suitable education, had been adopted, the class would now have stood higher in education and intelligence than they do. But a knowledge of reading and

writing is not, after all, indispensable to successful disposal of petty suits, though absence of interest is so ; and this is just what will be in patels so rare. Now, however, that the restriction of Village-Munsifships to patels has been removed and the proposal in the Bombay draft assented to, any person of local influence will be eligible, and the field of selection will be advantageously enlarged. Virtually, it will become nearly the same as that from which Conciliators are to be drawn. As to whether competent persons can be found for the two offices, especially the latter, I observe some striking differences of opinion. On the one hand, the Puna Sarvajanak Sabhá, Mr. Byramji Jijibhai in his clear and representative memorial, and a portion of the Native Press appear to have no misgivings. On the other hand, the Collectors of Sholapur and Satára seem to be pretty much of the opinion of the Commissioner (Mr. E. P. Robertson) that 'too much power will be thrown into the hands of a class *quite incapable* of exercising impartiality, or of resisting local or personal influence and acting independently and uprightly.' One of the principal Native newspapers, too, the *Dnyán Prakásh*, which has produced several very able articles on the Bill, thinks that, though the experiment may well be tried, the difficulties in the way of obtaining proper Conciliators are insuperable. Finally, Mr. Justice West appears almost to question whether half a dozen men of integrity and intelligence can be found for Conciliators in the whole Dekkhan tract. Such an opinion, even if not meant to be taken literally, cannot but arrest our serious attention, coming, as it does, from one who is not only a Judge of the High Court but Vice-Chancellor of the Bombay University. I do not ignore the probability that men qualified in all respects will not be easily met with; but I must confess scepticism as to a population of even three millions and a half (which the four districts comprise) being in a condition verging on that of Sodom and Gomorrah. If it be so, notwithstanding all our education, civilization and vaunted progress, then the inference seems difficult to resist, that our measures for the advancement of Natives to higher positions in the public service are premature. If the population, as a whole, are thus tainted, can our Subordinate Judges, our Deputy Collectors and our Mámlatdárs be utterly different from their caste-fellows and kinsfolk? Without pursuing this interesting dilemma, I will only say that, having spent a large share of my time in the Mufassal, and having always mixed freely and confidentially with the people of all classes, I should have no difficulty in finding a sufficiency of competent men in the districts with which I am best acquainted. It is now for those who think similarly to bestir themselves, lest the Native community lose the honourable and beneficent sphere which the legislature lays open for them, and to make good their opinions by presenting suitable persons to the notice of the authorities. And it is for the latter to strive without prejudice to give the experiment a fair trial, remembering that a knowledge of law is unnecessary, and even reading and writing are not indispensable to a suc-

cessful discharge of the functions in question, in which the layman of age, influence, shrewdness and good temper may easily surpass the highly-trained judge. After all, if a competent Conciliator cannot be found for any particular local area, no one will be appointed, and the requirement of conciliation before suit will not apply there.

"Turning from *personnel* to functions, I observe considerable confusion and misapprehension of those of Conciliators. A Conciliator is neither an arbitrator nor a judge, either in our Bill or in France, whence the institution is derived. He is simply a disinterested third party, who is charged to endeavour to bring disputants to an amicable settlement. It so happens that in France the Conciliators are *Juges de Paix*, and so have a jurisdiction to try the more petty of the cases (within, say, Rs. 50) in which it is their duty to conciliate. But they conciliate in all the superior cases which they have no power to try. The functions of conciliating and trying are distinct, and have no necessary connexion with each other. Appoint our Village-Munsifs or Subordinate Judges to be Conciliators (there is nothing in the Bill to prevent this), and they will be the exact counterparts of the *Juges de Paix*, except in one particular, to which I will presently allude. Some authorities, including Mr. Justice Green of the Bombay High Court, think that they ought to be so appointed. But others, and especially the Local Government, consider that judicial functions might impart to their recommendations a weight amounting to undue pressure, which parties, and especially the ignorant raiyat, might be unable to resist. The one particular of difference from *Juges de Paix* to which I referred is the absence of power to compel attendance. Considering the doubt whether competent Conciliators can even be found at all, the Bill follows the opinion of the Bombay Government, thus expressed in Sir Richard Temple's Minute of April 14th, 1879:—

"'Though he (the Conciliator) would not have the power of deciding, or enforcing his decision if he formed one, still he would, by compelling attendance, be able, if so disposed, to put great pressure on the raiyat to admit or to compromise the claim. Such power of applying pressure by an educated man of position upon an uneducated and humble man on a claim preferred by a man generally of some education and wealth is a power that ought not to be conferred upon Honorary Conciliation Judges in the present state of society in the Dekkhan.'

I myself doubt whether the want of this power will affect the *status* of Conciliators, as some apprehend. If they can settle disputes equitably, the people, debtors as well as creditors, will readily resort to them. But here, as in the case of giving powers of conciliation to Judges, the Bill presents no obstacle to a change hereafter. The Local Government can, under section 37, give power to compel attendance whenever they think fit.

"In connection with chapter VII, some exception has been taken to the cost of the extra Subordinate Judges' Courts to be constituted, and of the

supervising officers. The object of bringing the Courts nearer to the homes of the people might, it is said, be as well, or even better, attained by making the Courts move about. The existing Judges, it is added, have not got too much to do as it is; and the new summary procedure, with the temptation to refer difficult points to arbitration, will lead to their having still less. That the Courts should move about to some extent would certainly be advantageous; and I hope that the hitherto dormant powers of section 23 of Act XIV of 1869 will now be exercised to enable them to do so. But this can never be more than a limited benefit. There are rarely above two or three villages in a taluqá containing suitable accommodation for a Subordinate Judge and his clerks, to say nothing of parties and their witnesses; and even these are often not conveniently accessible in the rains. The presence of a considerable body of strangers, too, is always a source of annoyance and expense to the villagers, even if the calls on them do not exceed those of hospitality. Time would likewise be lost in travelling and settling down at each place; pleaders in non-agriculturists' cases would be inconvenienced, and minor practical difficulties would crop up. It is questionable whether, between waiting till the next visit to the locality to begin and adjourning till the next visit to complete, any saving in time would result; while, finally, the raiyat would in very many cases be living no nearer to the selected village than to the Court's head-quarters. As to the other statement, it remains to be seen whether the duty of going more fully into cases will not neutralize any saving in time obtained in other ways. But however this may be, I can see no good reason why the judicial unit of administration should be larger than the executive unit. Every taluqá ought, in my opinion, to have its Subordinate Judge as well as its Mámlatdár. If the civil work proved insufficient to occupy the Subordinate Judge's full time, he should be invested with criminal powers. The Mámlatdár and his first karkún, being proportionately relieved, could then better overtake the multifarious and increasing duties heaped on them, besides taking back, at a great saving of expense, the registration work, of which they were a few years ago relieved.

"As to chapter VIII on Village-Registrars, I have only to say that I doubt whether kulkarnís, as a class, deserve the abuse which is bestowed upon them by some revenue-officers, and even by one Native newspaper. They perform faithfully a large amount of public business, and their hereditary service emoluments are a security for their conduct. But as to this, and also the objection that they are not sufficiently numerous to save the raiyat all trouble in resorting to them, I would point out that many other persons (among whom I may specify village schoolmasters) are eligible, and that clause (*b*) of section 55 will in many cases enable raiyats to register their deeds at the places where their saukárs reside, instead of at their own villages, if they

prefer to do so. About chapter IX I have only to point out that the giving of receipts has been made obligatory; and of chapter X to say that the provisions regarding appearance by a relative, servant or dependent are copied from the Madras Village-Munsifs Regulation, IV of 1816.

"I will now notice three subjects, the entire omission of which from the Bill has been the cause of much adverse comment. The first is that of a modification of the rigidity of our land-revenue system. The Anglo-Indian Press, and seven out of the eleven vernacular newspapers of the Bombay Presidency which have noticed the Bill, have commented more or less emphatically on the absence of provisions in this direction. On the merits of the question in the abstract, it is unnecessary for me to add anything to the few remarks which I had to make, for the completion of my argument, in my introductory speech. But as to its omission from the Bill, I may say that it is held that for whatever action (if any) which may be necessary no legislation is required, but that if the fact were otherwise, the Bombay and not the Governor General's Council is the place where it should be undertaken. Legislation is unnecessary, because the question is an executive one. The power of fixing the rates of assessment, original or revised, is given to the Bombay Executive Government by sections 100 to 107 of the new Bombay Revenue Code, as it was by the previous law; the power of fixing instalments is so given by section 146; the granting of remissions is equally an executive matter. The regular mode, therefore, of securing all that the advocates of a change of system desire is by executive order, or by rules made by the Local Government under section 214 of the Code. Supposing, however, that it were thought proper to tie down the Executive Government in these matters more than it is now tied, then the proper course would be to amend the Bombay Revenue Code; and that is the function of the Bombay Legislative Council, which passed it, not of the Governor General's Council. Our present Bill, I need scarcely say, would not be before this Council at all but that it modifies the Civil Procedure Code, which the local legislatures are precluded by Act of Parliament from touching.

"Another omission which has been censured is that of any reduction of stamp or court-fees, process-fees, batta, &c. Here, again, legislation would have been superfluous. In Act VII of 1870 the Governor General in Council is empowered by section 35 to reduce or remit any of the court-fees mentioned in the schedules; and the High Court, with the sanction of the Local Government, may under chapter IV fix process-fees as it thinks proper. Act I of 1879, section 8, contains a similar power to reduce the stamps to which it applies, among which arbitration awards are included. I am not authorized to announce any decision on this subject; but it will be seen from paragraph 16

of the letter of the Bombay Government, No. 2056 of April 15th, 1879, which was published in the *Bombay Government Gazette* of the 30th of July last, that some reductions are looked upon generally with favour. I may add that the regular inspection of Courts under section 9 of Act XIV of 1869, which is now, as Mr. Naylor remarks, so little practised, is needed, *inter alia*, to check abuses connected with these charges. In 1876 the Judge of Khandesh brought to light a custom of enhancing the amount payable for stamps by requiring, in certain cases, an application on stamped paper before a witness was examined. He also found that in process-serving 'in one Court alone as much as 96 days' pay was obtained for 24 days' work, and 102 days' pay for 26 days' work, of the serving establishment.'

"The last omission I have to explain is that of any legalization of panchâyats or arbitration courts—a subject which I mentioned in my introductory speech as still under consideration. A proposal for the definite incorporation of such courts into our judicial system has been put forward by the Judge of Ahmadnagar, Mr. Wedderburn, with the concurrence of a body of Native gentlemen, including some judicial officers, whose position and attainments entitle their views to the fullest consideration. I must say frankly that I look upon as wholly visionary the idea that it is possible now-a-days to find in every village, or even in every small circle of villages, body of men sufficient in number to allow selection from them by litigants for the formation of a panchâyat, and at the same time qualified to be arbitrators by influence, intelligence and absence of interest. And even were this otherwise, I should expect that the strict regulations, involving checks and delays, which the proposal just referred to comprises, would practically destroy the freedom, simplicity and promptitude supposed to be the chief recommendations of the panchâyat system. That the provisions for arbitration in Bombay Regulation VII of 1827, which succeeded the even more efficient ones of Regulation VII of 1802, had fallen entirely into disuse before their repeal in 1861, and that the present new 'arbitration courts' are kept at work chiefly by the exertions of a very small number of disinterested and impartial individuals, are facts not very encouraging to a new departure. At the same time, as there undoubtedly is a popular sentiment, originated probably by aversion to our Courts as now conducted, running in favour of voluntary settlements, I personally can see no harm in aiding them by legislation of a purely permissive kind. We might safely revert to pretty much the position of Regulation VII of 1827. Persons whom the Government deemed of good character and competent, as also the members for the time being of any well-conducted local arbitration court, might be officially recognized as arbitrators. Such recognition should have the effect (1) that they should be entitled to the aid in their proceedings of issue of process by the Subordinate Judge of the division; and (2) that any reference for arbitration to them

might provide that in the event of any party thereto giving notice, within fifteen days of the date of the award, to the Subordinate Judge of the division that he was dissatisfied with the same, the matter in dispute should be referred back to the same court or arbitrator, sitting with such Judge as president. This would supply the recognition and control for arbitration which its advocates seem to desire, without putting any pressure on parties to resort to it. But even thus much is considered by the Local Government to be undesirable and likely to lead to prejudicial results. As they are, of course, the best judges of the state of affairs in the Dekkhan, the law will remain as it is. I may, however, point out that there is nothing to prevent parties appointing Village-Munsifs and Conciliators to be their arbitrators, and that an explanation making this clear has been added to section 43.

"In conclusion, I must observe that it would be premature to indulge in any congratulations upon the passing of this measure, and still more so to attempt to appraise its several parts, to distinguish the several sources whence they may have been derived, and to distribute praise or blame accordingly. It will be time enough to do that, if it need be done at all, when the Act has become an acknowledged failure or success. At present it is the measure of the Government of Bombay (and I am glad to think that through many vicissitudes it has substantially remained so), prepared in general consultation with myself. But I hope that we may augur well for its future from the fact that it not only has the approval of the highest official authorities but has secured, in a degree quite unprecedented, the substantial support of the Press and the public. It is a sincere and carefully matured attempt to solve a difficult problem and to meet a great emergency. If the course of events should prove that we have erred, we shall have erred in good company, and after all possible precautions to ensure success."

The Hon'ble Mr. Thornton said :—"Having been taunted in the course of this debate with having spoken one way and voted another, I think it due to myself to trouble the Council with a few more words of explanation regarding the course I have pursued. It is true that I have voted for certain provisions in this Bill of the propriety of which I am extremely doubtful; but I have done so on the distinct understanding that the Bill is local, and the measure strictly tentative and experimental. Thus, as regards the abolition of appeals in small-debt cases and the substitution of a revising agency instead, my experience in the Panjáb tells me that in that province such a measure would be exceedingly unpopular; but, while I am not prepared to admit the abolition of appeals in small-debt cases to be a universally appropriate and effective remedy for the misfortunes of the raiyat, I am not prepared to object to the experiment being tried in a portion of the Bombay Presidency. Again, my experience

tells me that any attempt to exclude legal practitioners from the Courts of a locality where the people have for years been accustomed to forensic agency will positively fail or produce greater evils than those it is sought to remedy. But my opinion, though true of the Panjáb, may not be applicable to the circumstances of the Dekkhan ; and I should certainly hesitate to force the results of my imperfect experience upon the Bombay Government. But it may be urged—'If you are not going to act on your Panjáb experience, why drag it in at all? Why advise the apparently inconsistent course of damning an amendment from your experience, and then voting in support of it?' I answer that I have adopted this course in order to indicate clearly and unmistakeably that, though I am prepared to vote for the measure as a local and experimental one, I do not approve of all its provisions, and am not prepared to adopt it as a triumph of statesmanship, or to advocate its extension to other localities until is success has been practically proved.

"There are, moreover, other provisions in the Bill to the success of which my own experience is adverse. Thus, it has been found in the Panjáb that the procedure of Small Cause Courts is quite unsuited for a rustic population ; that the system of forced arbitration provided in section 15 of the Bill is a mistake; and that the system of official interference with the terms of contracts contemplated in chapter III—a system which prevailed, and still prevails to some extent, in the Panjáb—has a demoralizing effect upon the people, raises the rate of interest on money lent, and yet fails to teach prudence to the improvident. It is also my opinion that the extension of the period of limitation in suits on account, besides being based upon a misconception of the present law, will only stave off, and ultimately intensify, the evil it is sought to remedy, and that, while the procedure of all small-debt courts should be conciliatory, the appointment of special courts of amateur Conciliators will lead only to dissatisfaction and delay. But while I should, for the reasons above stated, object to the extension of these provisions of the Dekkhan Raiyats Bill to the Panjáb, at any rate at present, I should not feel justified on those grounds in refusing to allow them a trial in a locality upwards of a thousand miles away.

"The above explanation will, I trust, remove from the minds of Members of this Council any impression any of them may have received that in the course I have adopted I have acted with inconsistency. I would add that, so far from grudging the Bombay Government its experiment, I shall, whether in India or in England, regard it with the greatest interest, and with the earnest hope that it may work some benefit at least for the much-vexed raiyats of the Dekkhan."

His Excellency THE PRESIDENT said:—"I have no doubt that the votes given on these amendments by my hon'ble friend Mr. Thornton were influenced,

as my own were, by the importance he attached to the fact that this Bill only comes before the Council at all because it happens to modify the Code of Civil Procedure, which the local legislatures are not competent to deal with. In point of fact, therefore, the Bill, though now about to be passed in this legislature, was, and is, a Bombay measure. As a Bombay Bill it came into our hands, and to me personally it is a cause of no small satisfaction that, notwithstanding the long and careful discussion given to it both in Committee and in this Council, and,

> 'In spite of all temptations
> To belong to other legislations,

it still remains a Bombay Bill."

The Hon'ble SIR ALEXANDER ARBUTHNOT said :—" The explanation just given by my hon'ble friend Mr. Thornton was, I think, partly elicited by a remark of mine. I am sure that there is no Member of this Council who values more than I do the services and the assistance which have been invariably rendered to us by my hon'ble colleague since he became a Member of this Council; and no one who deplores more than I do the early prospect of his retirement from this Council. I quite see from the explanation with which the Hon'ble Member has now been so good as to furnish us that his course in this matter has been as consistent and straightforward as his course has always been throughout his long and distinguished official career."

The Motion was put and agreed to.

LEGAL PRACTITIONERS BILL.

The Hon'ble MR. STOKES moved that the Reports of the Select Committee on the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865, be taken into consideration. He said that, since the Bill as amended by them in August last was published as recommended in their report of the 21st of that month, several papers from various quarters containing remarks and criticism on the Bill had been received, and the Committee had made some further amendments in it. He would now mention the more important of these.

In the report last referred to, the Committee had reserved for further consideration the request of the Government of the Panjáb that the Chief Court of that Province should be empowered to enrol advocates in the same way as the High Courts were empowered by their Letters Patent. They felt at the time some doubt as to the necessity or desirability of increasing the number of authorities competent to enrol advocates. But it had been represented that the High Court of the North-Western Provinces had recently refused to enrol advocates unless they intended to practise at its own Bar;

that it was not improbable that the other High Courts would do the same; that thus the only way by which an English barrister could hitherto gain admittance to the Courts of the Panjáb on the footing of an advocate might be closed; that it was scarcely to be expected that the most promising men would be willing to practise in those Courts on any other footing; and that thus an element, which at present gave a higher tone to the Provincial Bar, would rapidly disappear. To these considerations, urged by persons most competent to form an opinion on the matter, the Select Committee had deemed it right to yield; and they had accordingly inserted a section in the Bill (41) giving the requisite powers. They had at the same time amended section 4 so as to put the advocates of the Panjáb Chief Court as regarded their privileges in other Courts on the same footing as the advocates of the High Courts; and they had added to the repealing schedule sections 42 to 44 of the Panjáb Courts Act, 1877, as the powers conferred by them would, if this Bill became law, be no longer required.

The Committee had omitted "Coorg" from the enumeration of Provinces (in section 1) to which the Bill was made directly applicable, as the Chief Commissioner had represented that there were certain portions of the Bill (those, for example, relating to revenue agents) which would be unsuitable in that province.

They had restricted the power given by sections 12 and 21 to suspend or dismiss a legal practitioner convicted of a criminal offence to the case of offences implying a defect of character unfitting the practitioner for his position as such.

They had inserted words in section 13 rendering a pleader liable to suspension or dismissal for taking instructions from any person other than the party on whose behalf he was retained, or the private servant or "recognized agent" of such party. The necessity for such a provision, in order to render effectual the prohibition against unauthorized practising as a mukhtár, had been brought to notice by the Calcutta High Court.

At the instance of some persons who had complained of the stringency of the procedure against legal practitioners guilty of misconduct, the Committee had extended from ten to fifteen days the period allowed by sections 14 and 23 for preparing an answer to a charge, and had inserted a new section (40) providing that no legal practitioner should be suspended or dismissed until he had been heard, or had had an opportunity of being heard, not only by the authority inquiring into the charge against him, but also by the authority exercising the power of suspension or dismissal.

They had also amended the second schedule so as to make all certificates to pleaders and mukhtárs except those of the lowest grade confer the privilege of practising in any Criminal Court subordinate to the High Court.

The commencement of the Act had been postponed to the 1st January, 1880, in order to allow time for some of the pleaders of the Calcutta Small Cause Court and some few pleaders up-country whose position would be affected by the Bill to apply to the High Courts of their respective Provinces for licenses to practise.

The remaining amendments were not of sufficient importance to call for special notice.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

RAIPUR AND KHATTRA LAWS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law in force in Thánás Raipur and Khattra. He said that it was recently determined, as part of a larger scheme for the redistribution of territory in the Lower Provinces of Bengal, to transfer the tracts comprised in the thánás of Raipur and Khattra in the Mánbhum district of Chutiá Nágpur to the district of Bankura, with which they were not only geographically but also, looking to the race and language of their inhabitants, more closely connected. The actual transfer was carried out on the first of this month; but, owing to these tracts having been hitherto comprised in a Scheduled district, there were certain differences between the law prevailing in them and that prevailing in the rest of the Bankura district which it was desirable to remove with the least possible delay. The present Bill had accordingly been prepared with the object of assimilating the law of these tracts to that of the rest of the Bankura district with effect from the date of the transfer. As the Bill would affect the Scheduled Districts Act, XIV of 1874, it had to be passed by the Governor General in Council.

The Motion was put and agreed to.

The Hon'ble MR. STOKES introduced the Bill. As there had not been time to circulate it, and as it was very short, he would read it to the Council:—

"*A Bill to amend the law in force in Thánás Raipur and Khattra.*

Preamble.

WHEREAS the territory comprised in the tháná of Raipur (including the independent police outpost of Simlapal) and the tháná of Khattra has been transferred from the district of Mánbhum to the district of Bankura;

And whereas the said territory, when included in the district of Mánbhum, formed portion of the Chutiá Nágpur Division, which is a Scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874);

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankúra; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Raipur and Khattra Laws Act, 1879":

Commencement.

and it shall come into force at once.

Laws of Bankura to apply.

2. All enactments which on the first day of October 1879 were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day; and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory.

Other laws repealed.

Pending proceedings.

3 All proceedings commenced before any authority in the said territory before the said first day of October 1879, and still pending, shall be disposed of by such authority as the Local Government may direct, and, save as aforesaid, shall be carried on as if this Act had not been passed.

Territory to cease to be a Scheduled district.

4. The said territory shall be deemed to have ceased to be a Scheduled district on the said first day of October 1879."

The Hon'ble MR. STOKES applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th November, 1879.

SIMLA;
The 21th October, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt C. B Press, Simla —No 566, L D.—19 11 79 —230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 7th November, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble G. H. M. Batten.

FACTORIES BILL.

The Hon'ble MR. COLVIN introduced the Bill to regulate labour in Factories, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson and Hope and the Mover. He said that he had explained the general object of the Bill to the Council when he asked for permission to introduce it. There was very little to add to what he had said on that occasion, except that there were two or three points in the Bill as now introduced which must be regarded rather as experiments in solving some of the difficulties connected with it than as final settlements of them. For instance, the present definition of the word "factory" would probably require some amendment. It was now defined to mean a trade establishment in which fifty or more persons were employed in any manual labour exercised by way of trade. He should have been glad to have made the employment of steam, water or other mechanical power a part of the definition. Objections had been made to this addition: he was not sure that those objections were insuperable; but in any case the matter was one which had better not be finally settled until further information had been obtained from the Local Governments. Again, the determination of the age below which persons should

be defined to be children and young persons and the age under which the employment of children should be prohibited were questions on which it would be desirable to obtain similar information. The ages entered in the proposed Act must, therefore, be regarded as tentative until further enquiry had been made.

There were other points in the Bill besides those mentioned which he had no doubt would require amendment by the Committee; but he did not think that there was anything else which he need at present bring to the notice of the Council.

The Hon'ble MR. BATTEN said that, before the motion that the Bill be referred to a Select Committee was put to the vote, he begged, as he would not be a member of that Committee, to offer a few observations which had occurred to him in the perusal of the Bill. The Bill, if enacted in its present form, would be a purely permissive Bill. Unless the Local Government took action upon it, the sole matter which would be positively enacted—and this was also permissive—would be that it might be called "The Factories Act, 1880."

That, he thought, was a very innocuous provision, to which probably nobody would object. But a power seemed to be given—he said "seemed to be given" because it was not given directly, but only by implication—to Local Governments to extend, with the previous sanction of the Governor General in Council, the other sections of the Act to their respective provinces. The words were: "* * the other sections of this Act apply only to those parts of British India to which they may, from time to time, be extended by the Local Government, with the previous sanction of the Governor General in Council, by a notification in the official Gazette."

The power to extend was, however, not given in direct terms. When the Local Governments extended the sections, they were to apply. He presumed, however, that the section as it stood was rightly drafted; but it certainly did not seem quite clear. He had not seen the papers previous to the preparation of the Bill, except casually; but he understood that there had been not only a wonderful unanimity of opinion among most of the different Local Governments that the provisions of the Bill were required in the abstract, but also an extraordinary unanimity in their opinion that, in the concrete, they were not required for their particular provinces. If the Local Governments remained of that opinion, the Bill, if passed into law, would stand on record *in terrorem*; and probably it would be so far useful, and in any case everybody would have full legal authority to call it "the Factories Act, 1880"; but beyond that it would have no application. He hoped that he was right in supposing that the wording of the first section, if enacted, would permit the Local Governments to apply any particular section or provision of the Act without extending the whole of

the sections *en bloc.* He did not know whether that was the case or not; but he thought it extremely desirable: for he could well imagine that a Local Government might at first wish to restrict the operation of the Act to certain sections—for instance, to the appointment of Inspectors and the compelling of notice being given of injuries occurring to persons in factories. If such were the case, then it would be merely necessary to apply sections 3 and 8 and such portions of sections 9, 10 and 11 as might be required to enforce sections 3 and 8. As he said before, however, he was not aware whether the wording admitted of this partial application of the Bill or not. If the mere existence of the Act in its potential but inactive form would not in itself be sufficient to keep the occupiers of factories on their best behaviour, possibly the appointment of Inspectors and the compelling of information as to injuries in factories might be sufficient for that purpose. At any rate, they would give the Local Government power to ascertain what was going wrong, and, if necessary, to apply the more stringent provisions of the Act.

The only other observation he had to make—and in this he had to some degree been anticipated by the Hon'ble the Mover—was as to the definition of the word "factory." It appeared to him at present to be much too wide. He did not think in the discussions that had taken place in India and in England on the subject, and which had resulted in the present Bill being prepared, that there had been any idea of applying the proposed Factory Act to factories in which nothing but merely simple individual manual labour was used as the motive-power; and, if that was the case, he did not see why we should extend it to anything more. For instance, supposing that Ranken and Company on the occasion of a fancy ball were obliged to employ fifty darzís, each working with his own needle or sewing machine,—under the definition given in the Bill that would be a factory. And so, in the same way, fifty weavers, each using the hand-loom, would become a factory. It appeared to him that that was hardly contemplated in the discussions which had led to the Bill; and he hoped the Select Committee, for whose consideration he was induced to make these suggestions, would see their way to restricting the definition of the word "factory" as it now stood in the Bill.

The Hon'ble Mr. Hope said that he could not feel that the Hon'ble Mover had, on the occasion when he asked for leave to introduce the Bill, made out any very strong case for legislation. At the same time, as the object of the Bill was limited to protecting those who were not in a position to protect themselves, it appeared to him a humane one, and, as such, one to which we could not refuse our sympathy, and to which no reasonable person could offer any objection. The three points chosen appeared to come well within that object, that was to say, the question of age, of hours, and of fencing machinery.

That of inspection was merely ancillary; we could not see what was done under those heads unless they were brought under inspection. But it would be readily admitted, he thought, that it was indispensable that our legislation upon those points should be entirely in harmony with the circumstances and peculiarities of India. Probably very little of the experience derived in English factories would be of much use in India; and he fully agreed with the Hon'ble Member in his remarks on a former occasion that "the differences between England and India of climate, character and habits of life of the people were so great that much which was needed there would not only be inapplicable, but perhaps actually injurious here."

It did not, however, seem to him that the Bill which had been introduced at all corresponded with the principle which the Hon'ble Mover had laid down, and therefore he had heard with very great relief to-day that to a very great extent—in fact in almost every particular—the Bill was to be considered merely as a sort of carcass put forward for the Select Committee to work on. Consequently we could not be considered to be pledged in principle, much less in detail of course, to the sanction which he doubted not would be given to the introduction of the Bill to-day.

As to the details of the measure, as he observed that the Hon'ble the Mover had proposed that he (MR. HOPE) should serve on the Select Committee, he need not trouble the Council at any great length, or further than to say that in almost every particular the details of the Bill as now before them appeared to be open to objection. The age put down would have the effect of treating as "young persons who had not attained to an age at which they would be considered free agents" some who had actually got wives and families and were in the position of grown-up men and women. As to hours of employment, one of the most obvious results of fixing a daily instead of a weekly maximum would be to enforce working on Sundays all over India, which, he ventured to think, was not one of the objects which Earl Shaftesbury, at least, had in view in bringing the matter before Parliament. As to the fencing of dangerous machinery, he thought that a great deal too much power would be put into hands which were not skilled for exercising it; and perhaps it might be sufficient to empower the Inspector to apply to the Magistrate for an order, which could be obtained now under the regular criminal law, in any case in which he thought the fencing insufficient. As to inspection itself, he thought that some mode of appealing and of obtaining competent sanction before prosecuting should be provided. Likewise, with regard to the age, we were all well acquainted with the immense difficulty of ascertaining the ages of children in this country, and the Bill might very well lead to great oppression unless this could be got over.

He merely made these remarks because he thought that the Bill, if it went out as it was, might cause a great deal of apprehension in the country which, he hoped, would prove to be unnecessary.

As to the general application of the Bill, his remarks had rather a wider scope; and he fully agreed with the Hon'ble Member who had just spoken that the definition of "factory" as it now appeared was one which was far too wide. In fact, if it were allowed to stand in anything approaching to its present form, he should anticipate the worst results from the Bill. It covered industries where there was no machinery used and no close rooms; it likewise covered industries of a purely temporary character which were carried on for perhaps only a couple of months in the year; and even, as his hon'ble friend Mr. Batten had pointed out, it covered work which was carried on only for a day. On the other hand, there were certain industries which he was not sure whether the definition properly covered or not—possibly it did—such, for instance, as Government mines and factories. It might perhaps be more simple if a schedule of the particular industries with regard to which legislation was thought necessary could be appended to the Bill, and then the Local Government were empowered to extend the provisions of the Bill to them when necessary.

Having made these remarks with the object which he had just explained, of removing a misapprehension which might otherwise not unreasonably arise, he would only say that, as the Hon'ble Member was so liberally disposed as to the details of the Bill, he might rely upon his thorough co-operation in putting it into practical shape within the lines which he had endeavoured faintly to draw.

The Hon'ble Mr. Colvin wished to say a few words in reply to the observations made by his hon'ble friends who had just spoken. He was not sure whether the criticism made by his hon'ble friend Mr. Batten of the wording of the first section was justified by the drafting or not; but if it should prove to be so and if an amendment in the sense suggested should be necessary, he had little doubt that the Select Committee would agree to make it. Nor did he anticipate any objection to the Bill being modified, if necessary, so as to allow of Local Governments applying a part only of the Act, and not the whole of it, when they thought such a course desirable. It was unnecessary to follow his hon'ble friends Mr. Batten and Mr. Hope in their criticisms of the definition of the word "factory," because it had been fully recognized that the present definition was merely provisional.

As regards the Hon'ble Mr. Hope's remarks, he was glad to hear that he considered that the general object of the Bill was good and that it would have his support so far. He was not prepared, however, altogether to accept

Mr. Hope's view of the Bill when he spoke of it as merely a skeleton, which (if he had understood him correctly) might be altered by the Committee at pleasure; because the two main objects which the Bill was intended to effect—namely, that of affording security to life and limb from accident and of protecting children and young persons who had not attained to an age at which they would be considered free agents from being overworked—were essential to the Bill. On these points he should not wish it to be understood that he would consent to any material alteration. He would not follow his hon'ble friend in all the objections—of which he said that he had so many—to the details of the Bill, because, as it was proposed to make him a member of the Select Committee, he would probably have ample opportunity hereafter of bringing them to notice; and the Committee would, no doubt, be glad to receive any criticisms which were likely to be of use in framing the measure.

The Hon'ble SIR EDWIN JOHNSON said that he did not know whether this was the proper time and stage of the Bill at which to offer suggestions. He observed that the proposed Bill was, with the sanction of the Supreme Government, to be applied by Local Governments at their discretion. The whole of the clauses of the Bill, in fact, could be applied by any Local Government within its jurisdiction, under the general sanction of the Supreme Government; but he would ask the Select Committee to take into consideration that several of the factories with which they proposed to deal and for which they proposed to legislate were factories under the Government of India; and, if there was no objection on the part of the Select Committee, he would propose that in any measure having reference to factories generally, its special application to our military manufacturing establishments should only be sanctioned under the authority of the Supreme Government.

His Excellency THE PRESIDENT remarked that he understood the intention of the terms expressed in the first section to be that the application of the provisions under the Bill would be made by the Local Government only with the previous sanction of the Governor General in Council. That would involve a previous reference to the Supreme Government.

The Hon'ble SIR EDWIN JOHNSON observed that, in his opinion, before any principles were applied to the military factories, they should be specially brought to the notice of the Supreme Government for previous sanction. That was a suggestion which he merely offered for the consideration of the Select Committee.

The Hon'ble SIR ANDREW CLARKE said that, with reference to the remarks of his hon'ble friend Sir Edwin Johnson, he should like to say that one of the largest employers of juvenile labour in India were the Railway work-

shops. He thought some provision should be made for exempting them from the operation of the Act, and any other similar establishments. That was a point into which, he thought, the Committee might also enquire. So far as he was aware, the arsenals and dockyards in England were exempted from the operation of the Factories Act.

The Hon'ble MR. COLVIN said that the point raised had perhaps better be dealt with in committee. It was not, of course, intended that the Government of India should prescribe rules for private factories which it would be at liberty to neglect in its own. At the same time, it could hardly part with the control of its own establishments. Perhaps the rules to be framed by the Local Governments might be made subject to the sanction of the Supreme Government, and the necessary control so reserved. He thought that it was a matter which, having been brought to notice, might safely be left to the Select Committee.

The Motion was then put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

GLANDERS AND FARCY BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill for the better prevention of Glanders and Farcy among Horses. He said that the subject of legislation for preventing the spread of infectious diseases generally among animals had been for some time under the consideration of the Government of India. Recently the prevalence of glanders in the upper parts of the Panjáb had directed special attention to that disease. It was at first thought that Magistrates could, under the provisions of the Criminal Procedure Code, section 518, take summary action for the prevention of the evil and order the destruction of such animals as were duly certified to be affected with the disease, and instructions were issued to them to take action accordingly in the districts of Ráwalpindí and Pesháwar near the trunk road between the railway terminus and the armies in Afghanistan. Government had, however, since been advised that such action, so far as regards the destruction of animals the property of private persons, was not authorized by law. A Magistrate might, under section 518, direct the owner of a glandered horse, which was on a high-road or in some other public place and causing danger to other horses, to take certain order with it—to remove it, for example, to a certain distance from the public place. But the Magistrate had no power to order the owner to destroy the horse. Nor could

he interfere with horses in private premises at some distance from the public place. Now it appeared that glanders was more or less rife among the horses and ponies of the Government mail stations, and also in the villages along the road from Ráwalpindí to Pesháwar and Jamrud. Veterinary surgeons had been told off to examine all Government animals along the road; but the preventive measures against the spread of the disease would not be complete unless horses and ponies belonging to private persons were examined and, if necessary, destroyed, both on the road and in the cities and villages adjoining it. In view of the very serious consequences which might result to the forces on the frontier if the disease should appear among the artillery or cavalry horses, or among the baggage-mules or ponies, and of its highly infectious nature, it had been thought advisable to deal at once with the subject of glanders, and the present Bill had accordingly been prepared.

As the matter was one with which the local legislatures were fully competent to deal (in Madras there was already a local Act on the subject, and Mr. Stokes understood that similar legislation was contemplated by the Bengal Council for the town and suburbs of Calcutta), the Bill was confined to those provinces of the empire where there was no local legislature; and as, even in these provinces, the necessity for its provisions would only exist at certain times, namely, during an outbreak of the disease, and within certain limited areas, the Local Government was empowered, by notification in the Gazette, to apply the Act to, and again withdraw it from, such local areas within the territories administered by it as it might think fit. This would enable the Local Government to deal, for example, with military cantonments, with camping-grounds, with localities where large horse-fairs were held, and with lines of road frequented by horse-dealers; and thus stamp out disease and prevent the loss of valuable animals. But glanders was not only contagious as regards animals of the equine species: man also became affected with it by contagion or inoculation. Of all contagious animal diseases, it was, therefore, the one over which the strictest supervision should be enforced.

The provisions of the Bill briefly were that certain officers, to be called Inspectors, were to be appointed, who were to be empowered to search for, seize and, on the certificate of a duly appointed veterinary surgeon, destroy any horse which was affected with glanders or farcy (the latter disease was also prevalent and was highly infectious); that the owners or all persons in charge of diseased horses were to give immediate notice of the disease to an Inspector or a police-officer; that the buildings or other places in which diseased horses might have been were to be disinfected and their internal fittings destroyed; and that no horse which had been in contact with a diseased horse was to be removed, except in good faith for the purpose of preventing infection, without a license. General

powers to make rules in all matters for carrying out the purposes of the Act were conferred on the Local Governments. Finally, for the protection of Government and Government officers, all diseased horses which had been destroyed in the Panjáb under the recent orders of the Local Government or the Governor General in Council were declared to have been destroyed in accordance with law. In preparing the Bill, the provisions of the English Contagious Diseases of Cattle Act (41 & 42 Vic., c. 74), as well as those of the Madras Act (II of 1866), to which he had referred, had been duly borne in mind.

The Hon'ble SIR EDWIN JOHNSON said that the necessity for introducing a Bill of the character of the contemplated measure had been very prominently brought to the notice not only of the military authorities but of the Government on financial grounds, and he looked to very great and good results from the Bill which the Hon'ble Member proposed to introduce. His Excellency the Commander-in-Chief, if he made any remarks on the subject, would be able to speak as to the anxiety which His Excellency, in common with the Government of India, felt when he heard that, at the very crisis of our operations in the recent campaign in Afghanistan, those dangerous diseases were rampant. But, leaving the military consideration apart,—though its importance could not be overrated—he would remind His Lordship and the Council that every endeavour was at present being made to improve the breed of horses throughout the country generally. With that object we were spending certainly not very large sums, but sufficiently important to justify their being considered in connection with any Bill of this sort. Now, if we were making that expenditure with a view to improving the breed of horses for all purposes—agricultural and others as well as military—it was surely worth our while to take care that those horses were properly cared for, and that we should do our best to prevent their destruction by contagious diseases. His (the Military) Department had already obtained the concurrence of the Financial Department to establish a Veterinary College. He was not certain whether His Excellency the President had yet had the papers before him; but the matter was now one of detail between the two departments, which were at present dealing with the question as to the locality of the College. The necessity for such a College had been accepted long ago; the question, however, had been rather bandied backwards and forwards with reference to its situation; and the Lieutenant-Governor of the Panjáb was extremely anxious to see it established. He mentioned all this to show that the measure proposed to be introduced by the Hon'ble Member had a general application and was not a mere question of one service—the military; and, therefore, when the Select Committee came to consider it, they would, he trusted, bear that in mind. But there was another point which he had to ask his hon'ble friend Mr. Stokes to consider. The proposed measure was limited to the better prevention of glanders

and farcy among horses. There was however, another disease which was almost as bad as either of those, and from which we suffered very considerably in the army. He referred to the Ludhiána disease, which had almost put a regiment out of service owing to the danger of allowing it to mix with other troops—a regiment now on the frontier and actually in the field. Therefore, when his hon'ble friend Mr. Stokes was drafting the Bill, he hoped he would recollect the existence of the Ludhiána disease as one almost as dangerous as farcy and glanders.

His Excellency THE COMMANDER-IN-CHIEF said that he could recognize no necessity for any strong advocacy of the Bill. It appeared to him that the necessity for it was every day self-evident. As his hon'ble friend Sir Edwin Johnson had remarked, it was not only a very important military measure, but it was important to all owners of horses in every shape and form. The owner of a tattoo was relatively interested in the health of that animal and of course in the preservation of its life. The Bill would have this beneficial effect that it would enable us to visit out-of-the-way places, apart from those in which the disease might be generated and introduced among the valuable property of the Government.

On lines of dák there were frequent cases of glanders amongst the animals engaged in traffic, and it was of the utmost importance that Government and Government officials, on being made aware of the existence of such a disease, should be able to swoop down upon it and stamp it out at once. The meaner animals, he believed, were greatly the cause of the spread of this disease among the troops in quarters. Grass-cutters' tattoos, for instance, which were sometimes out for days together in a district, rubbing against country animals and browsing over defiled and tainted pasture, picked up and disseminated the disease, which, as was well known, often assumed a very virulent form. He believed, therefore, that the proposed measure would be of the utmost value not only to the military service, but to the Government and the country generally.

As regards the Ludhiána disease, he was not quite sure whether it was contagious. It was a disease about which very little was known, and in fact up to the present it had remained one of the mysteries, like cholera. He thought, however, that his hon'ble friend Sir Edwin Johnson was perfectly right in suggesting that this disease should be brought within the scope of the proposed Bill. He had no doubt that the loss by Ludhiána disease in horses affected by it amounted to something like 70 per cent., so that the destruction of the animal was really no great hardship on the owner affected by it. He would, however, suggest that the highest veterinary authority on the subject should be called upon to forward to the Select Committee appointed to deal

with the Bill a list of the contagious diseases which might be brought under its provisions.

The Hon'ble MR. STOKES remarked that there could not be any Select Committee if the Bill was to be passed at the next meeting of the Council.

His Excellency THE COMMANDER-IN-CHIEF suggested that in that case it might be advisable to consult Mr. Evans, Inspecting Veterinary Surgeon, who was at present in Simla. It was of great practical importance that information on this point should be derived from trustworthy veterinary authority; and perhaps his hon'ble friend Sir Edwin Johnson could communicate with Mr. Evans on the subject.

The Hon'ble SIR EDWIN JOHNSON remarked that he was quite prepared to do so; but, as His Excellency had observed, the disease was an extremely difficult one to deal with, and we had no very accurate knowledge regarding it, or whether it was contagious or not. He was not sure, therefore, whether before the next meeting of the Council Mr. Evans would be able off-hand to give such an opinion as would be of much value in framing the Bill. Still he would take care that Mr. Evans was consulted, and his opinion forwarded to the Legislative Department, who could work upon it in communication with the Military Department.

The Hon'ble MR. STOKES said that he should be sorry to commit himself to any undertaking to bring the Ludhiána disease within the scope of the Bill. In the first place, he did not know exactly what that disease was. He was told that it was a kind of anthrax, and that it might be communicated by inoculation—as, for example, by means of flies. But there did not seem to be a particle of evidence that it was infectious or contagious in the common acceptation of those terms. In the second place, he considered himself in a merely executive matter like this little but the instrument of the Executive Departments concerned; and he had received no instructions from the Home Department or from the Military Department regarding the matter. He would suggest that the Bill, which was one of great urgency, should now be passed in its present form; and then, as soon as they had found by inquiry from Mr. Evans and all the other authorities competent to give an opinion on the subject what the Ludhiána disease really was, and whether it was communicable by proximity or contact, an amending Bill might, if necessary, be brought in and passed.

The Hon'ble SIR EDWIN JOHNSON observed that it just depended whether the Legislative Department was prepared to consider this disease in their present Bill or not. If they were unable to do so, he agreed with his hon'ble friend Mr. Stokes that it would be preferable to go on with the original question of dealing with farcy and glanders rather than let the proposed Bill await

a discussion which might take weeks and weeks. He was very much inclined to favour the view of the case taken by Mr. Stokes that it would be advisable —indeed very necessary—to refer to many other authorities besides Mr. Evans in regard to legislating for the Ludhiána disease. He would rather see the Bill passed as it was and amended afterwards, if necessary.

The Motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend the Foreign Jurisdiction and Extradition Act, 1872.

TOWN-DUTIES AND TOLLS BILL.

The Hon'ble SIR JOHN STRACHEY asked leave to postpone the motion for leave to introduce a Bill to regulate the levy of town-duties and tolls in Municipalities.

Leave was granted.

The Council adjourned to Friday, the 14th November, 1879.

SIMLA;
The 7th November, 1879.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 590, L. D.—18-11-79—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th November, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Sir A. Arbuthnot, K.C.S.I., C.I.E.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.
The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.
General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble T. C. Hope, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble G. H. M. Batten.

TRADES AND PROFESSIONS TAX BILL.

The Hon'ble SIR JOHN STRACHEY moved for leave to introduce a Bill to impose a tax on Trades and Professions. He said:—

"MY LORD,—Nearly two years have elapsed since the Government of India resolved that it was necessary to take active measures for the improvement of its financial position, and especially for providing funds to meet the heavy charges and obligations which are entailed upon the State by the periodical occurrence of famine.

"I do not now propose to consider how far those measures have been financially successful. When they were taken, India was only just recovering from one of the most terrible and widespread famines recorded in her history. The year that followed, although less disastrous than its predecessors, was not prosperous; and it is only now, in the year 1879, that it seems possible to hope, with some confidence, that the long period of scarcity and famine through which the country has been passing has really ended. The seasons have this year been favourable. In almost all parts of India, the prospects of agriculture,

on which almost everything else depends, appear excellent, and we see, I hope, general signs of increasing prosperity.

"Unfortunately, famine was succeeded by war, and by another misfortune, which, considered from a merely financial point of view, was still more serious. I refer, of course, to the great disturbance in the relations between silver and gold, which has entailed upon the revenues of India such grave consequences. I do not now propose to enter into any general questions of finance. The time is not far distant when they will come under discussion. All that I will now say is that I feel satisfied that India will be well able to bear all her own proper burdens; that I see much that is encouraging and satisfactory in the condition and prospects of her finances, and no cause whatever for despondency.

"Among the financial measures taken at the beginning of last year, one of the most important was the imposition throughout India of a License-tax on traders. I will not recapitulate the reasons which led the Government of India to adopt this form of taxation, but I shall have to refer to them presently. Reserving whatever further remarks I may desire to make on this subject, it is sufficient now to say, as I said in this Council on the 9th February, 1878, that there was this strongest of all possible justifications for taxing the commercial and trading classes, that excepting that small section of them composed of Europeans, they paid scarcely anything towards the expenses of the State.

"We have now had sufficient experience of the new taxes to enable us to form a judgment on their merits and their defects. Financially, the License-tax has been successful, for it yields already about £870,000 a year; and taxes of this kind become more productive as knowledge and experience are gained by the assessing officers. With one exception the tax has been successful in other respects also. The greater part of the amount which it has yielded has been assessed and collected without difficulty or opposition; and although the tax has undoubtedly been unpopular, as all direct taxation must be, there has been only one really serious and valid objection to it. It has become clear that it descends too low, and that it falls on large numbers of people, on whom the imposition of taxation in such a form is neither expedient nor profitable.

"In the North-Western Provinces, Oudh and Madras, no person was made liable to the tax whose annual earnings were less than two hundred rupees; but throughout the rest of India, in Bengal, Bombay and the Panjáb, the minimum taxable income was fixed at one hundred rupees.

"When, my Lord, the Council was discussing the imposition of the License-tax, I spoke on this subject as follows:—

"'As to the objection, which has been raised in some quarters, that this tax will fall mainly on the poor, I content myself with simply denying the fact. It will touch no person whose nett earnings are less than rupees 100 a year; and if anybody asserts that, in the Provinces to which this Bill refers, any man is poor who possesses an income of rupees 100 a year, he is ignorant of the facts. Such a man is not poor; he is a man far removed above poverty, and well able to pay his contribution towards ensuring the country against famine. To say that our new taxation will fall upon the poor, is either an error or a calumny."

"I do not retract or qualify a word of what I then said.

"I assert as positively as ever that, in the greater part of India, a man with rupees 100 a year is not poor. Strange as it may sound to English ears, a small trader or artisan or agriculturist in India, whose nett income is £10 a year, certainly commands more, not only of the necessaries, but of the comforts, of life, than a man with five or six times that income in England; and it is also certain that the taxes paid by the former are far less onerous than those of the latter. In confirmation of this, I may remind the Council of the remarks made by the Lieutenant-Governor of Bengal, Sir Ashley Eden, when the Northern India License Bill was under discussion; no one is likely to question his authority on such a subject. Repudiating the assertion that the tax would fall on the poorest classes,—

'It may be difficult,' he said, 'for men who know nothing of the country to realise that practically a Native with an income of rupees 100 a year is in a better position than a European trader or mechanic in Europe with an income of £100 a year. I am sure that every one really acquainted with the Native habits and modes of life and requirements will agree with me that this is so.'

"It is not, therefore, on the ground that the License-tax falls heavily on the poor, that I now admit that it affects a very large class which ought to be exempted. The reason for exempting them is, that the numbers brought under taxation have been far larger than was anticipated, and experience shows that it is not politically wise or financially worth while to collect from a great multitude of people fees so small as those which are imposed on the smaller incomes by the present License-tax.

"The difficulty of preventing extortion and oppression on the part of the petty officials entrusted with the duty of collecting the tax has proved, in some parts of India, serious, and it is impossible to doubt that there has often been reason for the numerous complaints which have been made. Fully as this must be admitted, and greatly as it must be

regretted, it would be a mistake and an injustice to suppose that such abuses have been universal; and as experience has been gained, there has been, I hope, everywhere, improvement in the manner in which the assessments and collections have been made. I see no reason to doubt that if the existing limit of liability to the License-tax were maintained, the Local Governments would everywhere succeed in removing all serious cause for complaint on such grounds as those of which I am now speaking. This is merely a question of good or bad administration. In some Provinces, we are assured already by the Local Governments that the tax is levied in so satisfactory a manner that no reason exists, in their opinion, for any large exemption of the smaller incomes. Thus, in Bombay, where there were at first many complaints of over-assessment and oppression, we are now informed that the collections are made without any trouble or complaint, and that all former difficulties have been removed. The Bombay Government does not think it necessary to exempt incomes of rupees 100 a year from liability to the tax. So also in the Panjáb. The Lieutenant-Governor has given a decided opinion that, so far as that Province is concerned, the only change that should be made in the minimum limit of liability is to raise it from rupees 100 to rupees 120.

'The reason,' it is stated, 'which Sir Robert Egerton has for this opinion is, that the Act is now fairly understood, and its provisions accepted by the people of this Province. The machinery is now in working order, and cases of oppression and hardship will become with each assessment more rare. Great care has already been taken in examining and amending the first assessments; and it is consequently, in His Honour's opinion, wiser to continue a tax which has been accepted and is working fairly well, than to make changes which may be theoretically right, but which, inasmuch as they are novel, will distract the minds of the people, and which, by diminishing the income derived from the License-tax, may necessitate the imposition of fresh and strange taxation. For these reasons, the Lieutenant-Governor would desire to maintain the present minimum with the slight alteration proposed by the Financial Commissioner.'

"When opinions of this kind are expressed by the Governor of Bombay and the Lieutenant-Governor of the Panjáb, Sir Richard Temple and Sir Robert Egerton, than whom there are certainly no higher or more competent authorities, I think that I may claim to have made good my assertion that, even in those Provinces where incomes of rupees 100 a year have been taxed, there is no foundation for the statements which have been made in some quarters that the result has been general and unjust oppression of the poor.

"Nevertheless, the Government of India has come to a decided conclusion that an alteration of the law is desirable, and I can explain the reasons for this conclusion in a few words.

"When the License Tax Acts were passed, it was left to the Local Governments to determine what should be the lowest limit of taxable income. The only interference exercised by the Government of India was to prevent this limit being less than rupees 100, for some of the Local Governments would have gone lower. It was not then foreseen how disproportionately large would be the number of persons assessed in the lowest classes, and how comparatively small would be the financial return.

"The schedules attached to the various Local Acts differ so much that I cannot give strictly accurate statistics, but there is no doubt that more than a million persons whose incomes are between rupees 100 and rupees 250 a year are now liable to the tax, and that the amount which they pay does not exceed £240,000. The mere statement of this fact is sufficient. It cannot be right for the sake of raising so small a sum to impose direct taxation on so great a multitude of people. Although there has not been in any part of India any reason whatever for thinking that the tax has actually led to political discontent, or the smallest apprehension of anything of the kind occurring, it is nevertheless politically wise to amend the law.

"In regard to the amount which it would be desirable to fix as the lower limit of liability to the tax, every Government in India has been consulted. I have already referred to the opinions of the Governments of Bombay and of the Panjáb, and have said that they were disposed to make little or no alteration in the existing limit of rupees 100. The Government of the North-Western Provinces and Oudh thinks that rupees 240 would be a suitable amount; this is rupees 40 higher than the present minimum in those Provinces. In Bengal, as the Council is aware, the Lieutenant-Governor, with the approval of the Government of India, exempted, not long ago, all incomes between rupees 100 and rupees 250 from liability to the tax. This was done by executive order; the Act gave to the Lieutenant-Governor the necessary authority. Both Sir Ashley Eden and Sir Steuart Bayley, who is now acting as Lieutenant-Governor of Bengal, concur in thinking that rupees 250 may properly be adopted in future as the minimum. The Government of Madras has also accepted rupees 250.

"The Government of India now proposes that rupees 250 shall be the minimum income liable to this form of taxation. It will be understood, from what I have said, that in fixing this amount we are really giving greater relief to the poorer classes of traders than most of the Local Governments think necessary; but it is better in this matter to err on the side of liberality. We think also that it will be desirable to maintain the same limit of rupees 250

throughout India. When the tax was first imposed, it was urged that circumstances differed much in different Provinces, and that it was not certain that the same minimum limit of taxable income would everywhere be appropriate. There is undoubtedly truth in this, but it is very difficult in practice to arrive at satisfactory conclusions on such questions, and it appears best to have a uniform limit. There is no part of India in which it will be a hardship to oblige a trader with an income of rupees 250 to pay a fee of four rupees a year. As I have already stated, it is estimated that by the changes now proposed we shall exempt more than a million persons from taxation, and shall give up revenue to the amount of about £240,000.

"There are various other points in which the existing License Acts require amendment, but I need not now detain the Council with explanations of them, and I have to speak of other matters of importance.

"In the first place, I must explain why the apparently unusual course has been taken of introducing a Bill such as this at Simla. The explanation is simple. All the License Tax Acts, excepting that in force in Lower Bengal, require the assessments and collections to be made for the calendar year. The Collector makes his demand on the first January, and the whole of the tax must be paid into the treasury, under serious penalties for default, by the first February. It is, therefore, obvious that if important alterations are to be made in the existing law, they ought to be made before the first January. Much confusion and embarrassment would follow from any subsequent change unless we are prepared to leave the present system of taxation virtually unaltered for the greater part of another year. There is another reason which renders it highly desirable that the intentions of the Government in regard to the License-tax should be made publicly known as soon as possible. If the Collectors are allowed to make their inquiries and prepare their lists and their assessments on the assumption that the law is to remain unaltered, they will have, later on, to do a great part of their work over again; and it is extremely important that they should know what is proposed as early as possible in the cold season when they can give personal attention to this part of their duties. The Government has this year been obliged, by obvious reasons connected with the affairs of Afghanistan, to remain longer in this part of India than has been usual; and if the introduction of the present measure were to be delayed until the Government reaches Calcutta, it would hardly be possible that it should become law, as I now hope it may do, by the end of December.

"I come now, my Lord, to another and very important part of my subject. It is a question which has, for some time past, been before the Government,

and its consideration has been rendered the more necessary by the proposal to sacrifice £240,000 a year out of the sum now yielded by the License-tax.

"The reasons which originally led the Government to confine this tax to trades and dealings, and not to bring under it the professional and official classes, were, as I thought, fully explained by me at the time. My observations were, I suppose, misunderstood; at all events they have been widely misrepresented. It has been alleged that I asserted that traders generally benefit by famines, and that justice required that no officials should be taxed, and arguments have been gravely brought forward to show that this cannot be. No such absurd assertions were ever made by me. My statement was that when scarcity affects one part of India, the producers of grain, the dealers in grain, and other traders in parts of the country not so affected, make large profits; and that while the agricultural and trading classes are, on the one hand, those that require large measures of relief in a region suffering from extreme scarcity, so, on the other hand, these are the classes which are in a position to obtain large profits when their own Provinces are flourishing, and other Provinces are suffering. I said further that the less wealthy members of the professional and official classes, who depend on fixed incomes for their support, or on incomes little affected by competition, suffer from the pressure of high prices, not only when scarcity prevails in their own Provinces, but when it prevails elsewhere. The high prices which, under such circumstances, serve to enrich the producing and trading classes, entail (I said) suffering on the small officials and on those subsisting on wages the amount of which they are powerless to regulate. The general truth of all this cannot, I feel sure, be impugned, and I shall not waste the time of the Council in further repudiating ridiculous opinions which have been attributed to me, but which I certainly never expressed.

"Apart from that natural dislike which is everywhere felt to any new taxation, and from complaints as to the manner in which the License-tax has been assessed, the principal objection to it has been that it is partial, and does not go far enough. The commercial communities in the three Presidency-towns have submitted memorials praying for its extension to the official classes, and there has been, no doubt, a very general feeling, shared by the officials themselves, that they ought to bear their share of the new taxation. The arguments contained in the memorials to which I have referred, if their logical consequences had been accepted, would have led to the imposition of an Income-tax rather than to an extension of the License-tax; but the re-imposition of a general Income-tax was not thought desirable, and it was determined that the new taxation should be confined to certain classes of the community.

Fresh taxation was imposed on landholders throughout the greater part of India; and traders were specially and unhesitatingly selected as constituting that class which bore the smallest share of the expenses of the State, compared with the great benefits it receives from our rule. It may be a fair subject for argument whether the line drawn by the Government of India, when it did not extend the tax beyond traders and landholders, and did not include the professional and official classes, was the best possible line; but it is altogether misleading to suggest, as has been done, that the official classes were alone excepted.

"It is perhaps not necessary to refer more to the past. But I may remark that in matters such as these, Governments cannot be guided by mere abstract ideas, and that, in the nature of the case, conflicting opinions have to be reconciled, and divergent interests to be considered. There has been no disguise that on this occasion advocates of an Income-tax were not wanting. As on many other occasions, a compromise was adopted, which, like all compromises, was open to criticism from one side or the other.

"The Government has never concealed from itself that there are practical inconveniences, as well as political evils, in not bringing the wealthier portion of the professional and salaried classes under taxation similar to that which has been placed on traders and, in the Bengal Presidency, on landholders; and now that we are proposing to modify that taxation, and to make a sacrifice of revenue, the re-consideration of the whole subject has (as I have already said) been forced upon us. Every Local Government in India has now concurred with the Supreme Government in the opinion that taxation similar in amount to that already borne by the wealthier classes of traders should be extended to the wealthier classes of officials, and that the License-tax should apply generally, as it already does in Calcutta, not only to trades but to professions. Although it is not proposed by the Bill which I am asking leave to introduce that any taxation shall be actually levied from any person until after the commencement of the next official year on the first April, 1880, it seemed plainly desirable not to delay the announcement which I have now made. It would not have been proper, when it became necessary to make important alterations in the License Tax Acts, as they affect traders, to leave the public under the impression, for several months to come, that the Government proposed to make no alteration in the law as it affected the official and professional classes. The proposal of the Government now is to deal with the whole subject in a single measure. It wishes, for the reasons which I have already explained, that this measure should be placed before the public as soon as possible, and that it should become law before the end of the year.

"I will postpone the observations which I shall have to make in some detail in explanation of the Bill which I am asking leave to introduce. I will now give a summary only of its more important provisions.

"In order to avoid minute inquisition into incomes, the existing License Tax Acts, as the Council is aware, divide the persons taxed into classes. The Bill maintains this system, with (as I shall notice presently) some modifications which are obviously required in the case of the higher grades. The classification is so arranged, that the average incidence of the tax shall always be as near as possible to one-and-a-half per cent. on estimated annual earnings. On the lowest class of all, that is, on incomes between rupees 250 and rupees 350, the average rate will be somewhat less. It is proposed to make no difference between the trading and professional classes; but separate provisions will be necessary for the taxation of the salaried classes, whether official or non-official. The rough process of classification, which is desirable in the case of traders and professional persons, whose exact incomes are unknown, would obviously be inexpedient and inconvenient in the case of the salaried classes. The amount of the actual salaries of all public servants is known, and those of the servants of companies and private persons can easily be ascertained. It is proposed, therefore, to assess the salaried classes by a percentage on their actual salaries. This was the plan adopted under the Certificate Act, No. IX of 1868, after the plan of taxing them by classes had first been tried under the License Act No. XXI of 1867. Following the precedents of those two Acts, it is proposed to exempt from liability to the tax the military servants of Government not in civil employment, whose pay and allowances do not exceed rupees 500 per mensem, or rupees 6,000 per annum; and for all other salaried persons, it is proposed, following the same precedents, to make rupees 100 per mensem, or rupees 1,200 per annum, the lower limit of taxable income. The rate of the tax will be nearly the same as the average rate assessed on traders, or one-and-a-half per cent.

"It is estimated that the extension of taxation to the official and professional classes, in the manner now proposed, will yield very nearly the same amount as that sacrificed by giving up the tax on the lower classes of traders, or about £240,000. From a merely financial point of view, the Bill will therefore, if it becomes law, have no appreciable effect upon our revenues. We shall gain no more than we lose, and the measure will only be one of re-adjustment of taxation. But we shall obtain somewhat greater equality in the incidence of taxation, and we shall remove, I hope, all grounds for the assertion (the justice of which, however, I am far from admitting) that we have placed undue burdens on the poor, and shewn undue favour to the rich. We shall

transfer to about 35,000 persons, three-fifths of whom are more or less highly paid officials, the greater portion of the burden now borne by upwards of a million traders, who, if not actually poor, belong, at any rate, to the humbler classes of the community."

The Motion was put and agreed to.

The Hon'ble SIR JOHN STRACHEY introduced the Bill to impose a Tax on Trades and Professions. He said:—

"MY LORD,—It is not necessary that I should detain the Council much longer in explanation of this Bill, and I have already sufficiently stated the reasons which make the Government desirous that it should be introduced and published with no avoidable delay. The Bill, so far as the trading classes are concerned, follows in most respects the provisions of the existing License Tax Acts.

"It differs from them, however, in some important particulars.

"In the first place, this will be an Imperial measure, which will supersede all the Local License Tax Acts now in force. There will not, I think, be any difference in the opinion that under the circumstances this course will be the most convenient to adopt. The Bill, as I have already said, will apply to all persons exercising professions, and to persons in service, whether public or private, as well as to the commercial classes. For the latter class, *i. e.*, persons engaged in trade, the lowest income taxable will be Rs. 250 per annum.

"All incomes derived from business have been grouped, as under the present Acts, in classes, which have been so arranged that practically the average incidence of the tax upon each of these classes may be expected to be about 1½ per cent. There will thus be little or no change in regard to the greater number of persons who are now taxed and who will remain liable under the new measure. But, under the existing Acts, the highest fees that can be levied on the largest incomes vary from Rs. 200 in Bombay to Rs. 800 in Madras. The extension of taxation to other classes, in the manner that has been proposed, will obviously render it necessary to remove what would otherwise be an indefensible advantage in favour of the richer members of the trading classes. The schedule has therefore been so arranged that the richer traders will pay, like others, at the rate of about 1½ per cent. on their presumed incomes.

"In the assessment of incomes the system actually in force will be generally maintained. No inquisition will be made; the assessing officer will proceed, as under the existing Acts, upon the best information that is available to him, without making enquiries of the persons to be assessed.

"Persons, however, who object to their assessment may, after paying half of the sum assessed, demand that their objections should be heard, and may shew, if they wish, that their assessment has been erroneous. The orders passed on such objections have been made open to revision, in order to afford the means of remedy where the objections may not have received due consideration.

"As the sums payable under the proposed Act will, in some cases, be much larger than those leviable under the existing License Tax Acts, provision has been made for payment of the tax, whenever it exceeds Rs. 40, in two instalments. For the same reason, it has been provided that a person whose income ceases during the year of taxation may claim a proportionate abatement from the sum assessed upon his profits for the entire year.

"To remove doubts which may arise in the case of persons who are in the receipt of salaries, a definition has been introduced of the word 'pay.' In the case of persons receiving salaries, whether from the Government or from private employers, the tax will be levied at a fixed and uniform rate of 1½ per cent.

"Salaries of less than Rs. 100 per mensem or Rs. 1,200 per annum will not be liable to taxation. In this respect the precedents of the License Tax of 1867 and of the Certificate Tax of 1868 have been followed. Military officers also and soldiers in receipt of allowances not exceeding Rs. 500 per mensem or Rs. 6,000 per annum have been exempted, as they were then; but it is not proposed to continue the same exemption to members of the Police, which has now become a purely civil force.

"Provision has been made, in the case of persons in private employ, for the collection of the tax through their employers.

"The Bill has been made applicable to the whole of British India, but power has been reserved to exempt such territories and classes of persons as cannot properly be brought under its operation.

"Such a class is the commercial class, or rather a portion of it, in the Central Provinces, who already pay the Pándhari tax. In several of the Scheduled

Districts which are now exempt from the operation of the License-Tax it will, no doubt, be necessary to make similar exemptions under the new measure.

"There is, I think, only one other matter which need now be noticed.

"In the existing License Tax Acts, prominent attention was drawn, in the Preamble and in the body of the Acts, to the fact that these taxes were imposed with the object of effecting 'a permanent increase of the revenue, in order to provide means for defraying the public expenditure from time to time incurred, and to be incurred, for the relief and prevention of famine in British India.' These words have been omitted in the present Bill, and it is desirable that I should explain the reason.

"I do not now propose to enter into any discussion in regard to the measures taken by the Government nearly two years ago with the object of protecting the country against the financial liabilities involved by the occurrence from time to time of famine, and of providing to the utmost of its power the means of preventing and relieving these calamities. Nor shall I now consider how far the Government has been able to carry these objects into effect. The time is not distant when the proper opportunity for such discussions will arrive. Meanwhile, I have only a few words to say.

"I quite admit that the financial part of this subject was somewhat complicated, and that it was not very easy of comprehension to a person who had not given careful attention to it. The difficulty has been increased by the fact that, since the Government of India explained the policy which it hoped to carry out, that policy has been very seriously modified by the obligation, placed on us by the Secretary of State, of greatly reducing our expenditure on those productive public works the construction of which we had looked upon as the best safeguard against famine.

"I had supposed, my Lord, that, if there was one thing which had been made clearer than another in regard to the measures in question, it was this,—that, although it was sometimes convenient to talk of a Famine Insurance Fund (I believe, however, that I myself on no single occasion used the expression), the Government altogether repudiated the idea that it was desirable to constitute any separate fund from the produce of the new taxes for the purpose of meeting expenditure on Famine. I said in the plainest language that I could find, in the debate in this Council on the 9th February, 1878, that the creation of any separate fund would not only be useless but mischievous,—that it would disturb the adjustment of grants and accounts, and

cause suspicion and trouble to all concerned. I will repeat the words which I used on that occasion:—

'What the Government desires is to establish a sense of the obligation under which it is placed in respect to the expenditure due to famine, which shall be felt in the same way as the obligation to provide proper Courts of Justice, Police, Education and so forth. For none of these objects has it ever entered into the mind of any one to suggest a special allocation of the revenue or a separate fund. Nor can any greater reason be found for a separate Famine Fund than for separate funds for any of those other objects which are obligatory on the Government.'

"The words that were inserted in the existing License Tax Acts and which I have quoted served undoubtedly to increase the misapprehension of these questions; and, although the policy of the Government remains unchanged, it is thought desirable to omit them.

"It has, my Lord, unhappily become the fashion of late to attribute to political opponents, not only ignorance and lack of wisdom, but the basest motives of deliberate dishonesty. The Government of India, or some of its Members, have had, in respect of this subject of famine-insurance, their full share of this vile usage, degrading to those alone who practise it. To such people scorn and silence are the only fitting reply, and they will certainly receive no reply from me. They will doubtless find in the omission of all reference to famine in the preamble of this Bill fresh evidence of the intention of the Government to evade or repudiate the solemn obligations which it assumed.

"To honourable critics of another stamp and to the public I give the assurance that the Government proposes no change of policy. It undertook, for the first time nearly two years ago, the responsibility of making provision for the protection of the country against the financial consequences of famine. It has never, notwithstanding the new and unexpected difficulties which have supervened, swerved from the policy of which it then proclaimed the necessity, and it will continue, to the utmost of its power, to carry out that policy in the future."

The Hon'ble MR. BATTEN said:—"The Hon'ble Sir J. Strachey has in the course of his first speech mentioned the reasons for which it was thought justifiable to exempt the professional classes and officials from the taxation imposed by the Acts of 1878. I think there is much force in those reasons, but their force is certainly less in the case of the richer persons of those classes, who can well afford to bear their share in the burden which was then thrown

exclusively on the commercial classes. I am, therefore, glad to find that the measure now proposed is designed to relieve the poorer traders and artizans at the expense of the more wealthy, professional, official and other salaried persons. I still think, however, that the reasons to which I have referred justify the exemption of officials and other salaried persons, who are in receipt of less than one hundred rupees a month, from taxation of this kind, although persons who derive their income from trades or handicrafts are subjected to the tax if their incomes are as low as two hundred and fifty rupees a year. The lower paid officials and other salaried persons are not only more hardly pressed by high prices in times of scarcity than are tradesmen and handicraftsmen, owing to the greater fixity of their incomes and the greater difficulty they have in protecting themselves by claiming increased salaries; but their standard of living and their consequent necessary expenditure is higher. This remark applies to all small-salaried persons, whether Natives or others; but it applies especially to the poorer European and Eurasian clerks. I do not think that any one will deny that this class on salaries between Rs. 20 and Rs. 100 a month is comparatively in more straitened circumstances than is the class of petty traders and artizans who earn an equivalent income. On these grounds, I think that the proposed minimum salary of one hundred rupees per mensem, for persons to be taxed under chapter III of the Bill, is fair and equitable. But I would go a step further and apply the same minimum to the poorer classes of professional persons whom it is now proposed to tax under chapter II. These poorer professional persons are very much in the same position as the poorer salaried persons, and it would be difficult in some cases to draw a line between them. They belong to the same stratum of society and live in much the same way. I would therefore ask that this point may be considered by the Council. The financial sacrifice from exempting professional persons whose income is less than rupees 1,200 per annum will be quite insignificant. I am aware that there may be some difficulty in defining this class, but I have no doubt that, with the help of the able Secretary in the Legislative Department, that difficulty can be surmounted. The idea is, that no person, whether salaried or professional, who was not subject to taxation under the Acts of 1878, shall be subjected to taxation under the measure now to be introduced, if his income is less than rupees 100 per mensem or rupees 1,200 per annum, and I have no doubt that words can be found to embody this idea.

"I am afraid that the commercial classes who have loudly demanded—I do not say unjustly demanded—that the taxation which they have been paying for the last two years shall be shared by Government officials and professional persons, will be somewhat disagreeably surprised to find that the inevitable

and logical consequence of a compliance with their demand will be to raise very considerably the maximum taxes which they themselves will have to pay. The maximum tax is now, in Madras rupees 800; in Bengal rupees 500; and in Bombay only rupees 200. Directly it is determined that officials shall be taxed by a percentage on their salaries—and any other mode of directly taxing them would, I submit, be almost absurd—it becomes impossible to maintain the maximum taxes on the commercial classes at the sums which I have mentioned.

"These taxes represent respectively one-and-a-half per cent. on monthly salaries of rupees 4,444, rupees 2,777 and rupees 1,111. Now, there are many officials receiving salaries higher than even the highest of these amounts, and consequently many officials who, if taxed at one-and-a-half per cent. on their salaries, will pay more than the maximum taxes now levied on the commercial classes. There can be no possible reason for taxing the highest paid officials at a less percentage than the lower paid, and there can be no possible reason why any officials should be taxed higher than equally wealthy gentlemen who derive their incomes from commerce.

"If your Lordship will permit me to make a personal illustration, I would ask if there is any reason why a company, firm or merchant, with an annual income of rupees 2,40,000, should be taxed less than the Viceroy, who draws an equivalent salary, and who will have to pay at one-and-a-half per cent. on that salary an annual tax of rupees 3,600? Hence, it seems to me that the taxation of officials involves, and rightly involves, higher taxation of the richest commercial classes, who have hitherto escaped with comparatively the lightest burden, especially in the Bombay Presidency. In that fortunate Presidency a merchant with an income, say, of rupees 50,000 a year—and I hope there are many such—has paid less than half per cent. as his tax, while his poorer brethren have been taxed at four times that rate.

"Besides extending taxation to official and professional incomes, the present Bill will remove these unjust inequalities in the taxation of the commercial classes, and I think on both grounds it deserves the support of this Council."

The Hon'ble SIR JOHN STRACHEY:—I should like to say a few words with reference to one suggestion made by the Hon'ble Mr. Batten that, with regard to the minimum amount of taxable income, the professional classes should be treated, not like the traders, but like the officials. I am sorry that we had not this suggestion before us when the Bill was framed; for I think it is one that well deserves consideration. In drafting the Bill, the precedents of the Certificate and License Tax Acts of 1867-68 were, in regard

to this matter, simply followed; but I think Mr. Batten has given very cogent reasons in support of the view he has now stated to the Council. Financially, the question has no importance at all. The amount we should receive from the tax would, for all practical purposes, be much the same under both plans. Therefore, on merely financial grounds, there could be no objection to Mr. Batten's proposal. As this subject has not been before the Government, I am not now able to say anything definite regarding it; and until it has been further considered by the Government, I must reserve the final expression of my own opinion. I think, however, I may say without impropriety, that my own personal present feeling is decidedly in favour of the adoption of the suggestion which the Hon'ble Member has made.

His Excellency THE COMMANDER-IN-CHIEF:—There is one point that strikes me with reference to this License Tax. In some municipalities a professional tax is already levied, which is the same thing. It affects the income of all professional men exactly in the same way. Is it proposed by this Bill that a man should pay twice under those heads?

The Hon'ble MR. BATTEN:—Yes. He will pay both the municipal and the imperial tax.

The Hon'ble SIR JOHN STRACHEY:—There is no change made in that case in the existing law.

His Excellency THE COMMANDER-IN-CHIEF:—This is a matter which affects a certain number of military men who already protest against the municipal tax now imposed on them, as your Lordship is aware, in Madras. There is a great deal of feeling on the part of the military authorities in Madras with reference to the incidence of the professional tax as it stands now. Sir Neville Chamberlain, for instance, is bound to pay for a license to draw his sword in Madras—to exercise his profession—and he positively cannot carry out the duties of the commission imposed upon him by the Queen without paying this tax.

In various other stations—in Bellary, for instance—I understand that they even go the length of taxing the battery-horses belonging to Government under the Municipal Act. There is a very strong feeling with regard to this tax amongst the officers serving in Madras, and if the proposed new tax is now placed on the top of that, naturally the irritation will be doubled.

There are also certain officers who pay British income-tax on part of their pay. Now, that is certainly a first charge on the pay they receive, and I

should like to know whether an officer who draws an income of, say, rupees 2,000 or rupees 6,000, and has to pay a certain sum on part of that income as British income-tax, is not entitled to rate himself in the next lower number in the schedule as an abatement.

The Hon'ble MR. BATTEN :—He does not come under the schedule at all. The tax on officials will be 1½ per cent. on their salaries, and the schedule does not apply to them.

His Excellency THE COMMANDER-IN-CHIEF :—But the principle is the same; and what I should like to know is, whether an officer is entitled to an abatement of taxation on the sum on which he has already been taxed under the head of income-tax elsewhere.

His Excellency THE PRESIDENT :—I may mention, with reference to one portion of the remarks of my hon'ble friend Sir Frederick Haines, that the Government of India have at present in preparation a Bill for the purpose of prohibiting the levy of any municipal tax upon military officers without the previous sanction of the Governor General in Council.

His Excellency THE COMMANDER-IN-CHIEF :—That of course meets every objection that I could possibly urge on that point.

The Hon'ble SIR JOHN STRACHEY moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

TOWN-DUTIES AND TOLLS BILL.

The Hon'ble SIR JOHN STRACHEY moved for leave to introduce a Bill to regulate the levy of town-duties and tolls in municipalities. He said—"In the Financial Statement for the present year, 1879-80, it was stated as follows :—

"'In connection with the subject of customs-duties, it may be mentioned, here, that the Government of India has for many years past had under consideration the necessity of imposing more complete checks on the system by which through a large part of India octroi-duties are levied for municipal purposes. The Government of India has emphatically condemned the imposition of local taxes on articles which have been either subjected to, or relieved from, imperial taxation, and has insisted that the duties actually levied shall, in all cases, fall solely upon articles locally consumed, and shall not be allowed to become taxes on through traffic, or to affect injuriously the general trade of the country.

"'Although much has been done in this respect towards the enforcement of appropriate rules, continued attention will be given to the subject, so that there may be no danger of finding that the principles by which the Government of India is guided in regard to its commercial legislation have been set aside by the local authorities, and that the efforts taken to free the trade of the country from impolitic restrictions have not thus been frustrated."

"My Lord, it is in fulfilment of the pledge, thus publicly given some months ago, that my present motion is made. The principles by which the levy of octroi-duties should be regulated were laid down by the Government of India so far back as 1868. I venture to say that those principles were unimpeachably correct, and their accuracy has never, in my opinion, been successfully impugned.

"'In the Resolution issued by the Government of India in 1868, it was stated as follows:—

"'Such duties should be restricted to articles actually consumed in the towns, and should not be imposed upon articles of general commerce, or interfere with the natural course of transit-trade. The Government of India has reason to believe that these sound principles, the truth of of which has been established by the prolonged experience of those countries of Europe in which octroi-duties form commonly a source of municipal revenue, have been frequently lost sight of, and that to meet the burden of an annually increasing expenditure upon police, education or sanitary improvements, a widespread system of taxation has been introduced, injurious to interests on which the burden in a great measure falls, and standing in the way of the proper development of the commerce of the country. It is to little purpose that the Imperial Government reduces or abolishes customs-duties in the interests of trade, if municipalities are permitted to levy duties on articles of commerce passing through their limits. In all parts of India municipal taxation is largely on the increase, and there is a growing tendency to overlook, for the sake of small local improvements, the real injury that is being inflicted upon important general interests. The Government of India does not consider it necessary to recapitulate, here, any of the standard arguments against transit-duties. Such duties have long since been condemned by universally accepted maxims of policy."

"The Government at the same time, in 1868, laid down the principles by which the levy of octroi-duties ought to be regulated. Those principles were that town-duties on articles of consumption should fall entirely on the population of the town for the benefit of which such taxation was imposed, and that a jealous guard should be kept lest octroi should extend to any article belonging to the transit or general trade of the country. The articles on which these duties might be imposed, and on which they might not be imposed, were enumerated. The first class of articles on which octroi-duties might, subject to certain restrictions, be levied, were articles of food or drink; animals for slaughter; articles used for fuel, for lighting or for washing;

articles used in the construction of buildings; drugs, gums, spices, perfumes and tobacco.

"The second class of articles, on which the levy of octroi-duties was prohibited, comprised articles liable already to customs-duty and imported into India by sea; salt, opium and liquors, and drugs liable to excise-duty. The articles were so chosen that municipal taxation should not encroach on imperial taxation, and that, in the words already quoted, important general interests should not be overlooked for the sake of small local improvements.

"Provisions were at the same time made regarding the refund of duties when goods were re-exported from towns; and for providing bonded warehouses, or other appliances for the storage of goods in transit, and for other purposes.

"These orders of the Government of India were received, I may say, with general disapproval and general opposition, by almost all local authorities wherever octroi-duties were levied; for this plain reason, that they had the effect of largely, in some cases, curtailing the existing municipal income. In consequence of the pressure thus brought upon the Government by the local authorities, some relaxation of those orders—I myself think unfortunately—was sanctioned by the Government of India.

"In 1871, it was allowed that the following classes of commodities might be added to the list of dutiable goods:—piece-goods and other textile fabrics, and metals and articles of metal, provided that the duty should not exceed one-and-a-half per cent. *ad valorem.* But, although I think these relaxations were to be regretted, nevertheless, in the main, the orders of 1868 were maintained in force; and if they had been properly carried out, they would have been quite sufficient to prevent any great abuses arising.

"Now, for the last ten years, the Government of India has been attempting to get these orders executed. Things are doubtless very much better than they were; but, although it may seem a confession of weakness on the part of the Government of India, still the fact must be admitted that its success has been very indifferent in securing the execution of these orders. The fact is, that it is difficult even for a Government like the Government of India to get its orders carried out when those orders are regarded by the local authorities as opposed to their local interests. In a circular issued by the Government of India, in the Home Department, on this subject, only about two years ago, it was said, with reference to the orders of 1868—

"'The Government of India are glad to acknowledge that for some time better arrangements were made, and that a general desire was exhibited, to comply with the instructions

issued; but of late years, owing either to the relaxation of vigilance on the part of Local Governments and Administrations, or to other causes, the Government of India have seen with concern that in isolated places octroi has again exceeded its proper limits, and is at the present moment, in different parts of the country, acting as a tax on through traffic, and affecting injuriously the general trade of the country."

"I will give a few illustrations of the things that are now liable to occur. I will first refer to representations which have been made from time to time by the Bombay Chamber of Commerce—a body which has always taken a most enlightened and excellent view, in my opinion, of this whole question, and which has repeatedly pressed on the Government (I wish their representations had had the success they deserved)the necessity for reform.

"In an address presented to your Excellency by the Bombay Chamber of Commerce in December 1876, the Chamber made the following remarks, which, with your Excellency's permission, I will read to the Council:—

"'In the year 1875, the Chamber instituted an enquiry into the nature and extent of the transit and town-duties levied by municipalities in the interior of this Presidency. The results of this enquiry induced the Chamber to urge upon His Excellency the Governor of Bombay in Council the expediency of abolishing, in all municipalities of the Presidency, all transit-duties and all town-duties having the character of transit-duties, and of confining town-duties, in accordance with the principles of municipal taxation defined by the Government of India in its Resolution dated 15th November, 1868, to a few articles of local consumption, such as ghee, firewood, fruit, vegetables, fowls, eggs and animals for slaughter, which did not enter into the general trade of the country. The Chamber, in its representation to the Government of Bombay, showed that transit-duties in their naked form were levied in Karáchí, Broach and Surát; that in nearly every municipality in the mufassal, the town-duties levied were converted into transit-duties by the stringent and illiberal nature of the rules under which refunds were granted; and that the duties levied by certain municipalities on certain articles were very high. In Karáchí, for instance, the town-duty on wheat was 2½ to 3 per cent., and on wool, 1 to 1½ per cent., of the value; in Surát, the town-duty on yarn was about 3 to 3½ per cent., and on copper 5 per cent.—in either case, about the same as the imperial customs-duty; while in Ahmadábád the town-duty on yarn was no less than 6½ per cent., or nearly twice the imperial customs-duty.

"'The town-duty levied on yarn imported into Ahmadábád is particularly objectionable. It is, we believe, quite understood to be a protective duty in favour of the two mills in that town against other yarn, whether of English or of Indian manufacture; and constituted as the mufassal-municipalities of this Presidency are, it illustrates the necessity of the strictest vigilance on the part of the Government with respect to the rate and incidence of every tax imposed by these municipalities. The town-duty levied on yarn brought into Surát is open to similar objections, and we have mentioned a few instances in which the town-duties in other places are much too high. We earnestly hope that your Lordship will order an immediate revision of all the taxes imposed by the municipalities of this Presidency to be made, abolishing all transit-duties, and

all town-duties having the character of transit-duties, or which have a protective effect, and reducing those which are high, or press heavily on any article."

"Again, on the 14th March, 1878, the Bombay Chamber of Commerce addressed the Government. It said:—

"'It is, we believe, universally accepted that the great principles of an octroi-duty are that it should be small and that it should never be allowed to operate as a transit-duty. Yet in numerous instances, whether the articles have already borne customs-duty or not, the taxes levied, under the name of octroi, by district-municipalities, are excessive, while the refusal to grant refunds when the articles are re-exported, or the limitations or restrictions imposed on the granting of refunds, have the effect of converting the town-duties paid into transit-duties."

"The Chamber then gave a list of cases in illustration of that statement, and they added:—

"'Numerous other instances could be furnished, but the Chamber has reason to believe that in almost every city and town-municipality throughout the Presidency, excessive duties are levied, and on articles on which no municipality should have any right to levy a duty. It has, however, been specially brought to the Chamber's notice that at Barsee very heavy taxes have been levied on machinery erected there, and that at Veerumgaum a duty of 4 per cent. was levied on hoop-iron sent there for the purpose of binding bales of cotton, and no refund was allowed. At Wudwan no duties appear to be charged on articles entering the town, but iron or similar articles cannot come out of it without being taxed at the rate of about 10 per cent.: a duty of Rs. 600 would be levied on the removal of an old cotton-press. Other impositions, and of a similar character, are, it has come to the knowledge of the Chamber, levied in many parts of the Presidency."

"I have quoted these passages only as illustrations of what is liable to occur at the present time, and of things that, at any rate, were actually occurring only a short time ago. I do not say that in these particular instances the state of things thus described now prevails. The Government of Bombay, since Sir Richard Temple has been in Bombay, has been paying great attention to this subject, both in that Presidency and in Sindh, and I believe that things are much better than they were. But although, as I say, I only give these as illustrations, it is impossible to doubt that a more or less similar state of things still exists in many places where octroi-duties are levied. One of the most preposterous illustrations of this system was to be found not long ago at Karáchí. Karáchí, as we all know, has been—and we hope it will be a great deal more in the future—one of the chief ports for the export to Europe of Indian produce. One of the great staples of the country, which has its outlet towards the sea at Karáchí, is wheat; and with the object of removing all obstacles to the growth of this most important trade, the duty on the export of wheat was everywhere abolished by the Government of India. Two years ago, it was found by the

Government of India that one of the very largest sources of municipal revenue at Karáchí was an octroi-duty levied at the rate of from 2½ to 3 per cent. on all the wheat brought down from the Panjáb and Sindh for export to Europe. I think no terms can be too strong in reprobation of such a state of things. It has now happily ceased; a better system has been introduced in spite of the strong protests of the municipality of Karáchí, which naturally liked very much having its local wants supplied at the expense of other people. This is, of course, an extreme case, and I do not mean to say that such cases are common; but, nevertheless, it is an illustration of what has been going on.

"Now, if such things be allowed, it is really useless for the Government of India to attempt to establish proper principles of commercial legislation, and it may save itself the trouble of trying to reform its customs-tariff; for when we have taken off duties and carried out the principles of free trade, at a serious loss perhaps to the Imperial revenues, traders and manufacturers may find that, after all, they are no better off than before, and that heavier burdens than those from which they have been relieved have been imposed or are maintained by local municipalities for local purposes.

"We are often told that the great merit of taxation of this kind is that it is popular; that the people have long been familiar with it; and that it is inexpedient to force municipalities to substitute unpopular taxation for imposts that are not practically felt by the people. Now, up to a certain point, this is perfectly true. The Government of India has no desire to embark in any general crusade against octroi-duties. It has not objected to octroi-duties when they are properly managed. Going back to the principles laid down in 1868 by the Government of India, from which, in regard to this matter, there has since been no departure, it was said that—

"'If these principles be strictly acted upon, and the duties be moderate in amount, the Governor General in Council is of opinion that there is in many parts of India nothing objectionable in this system of taxation for local purposes. In wealthy communities like those of Europe it may be admitted that the balance of argument is in favour of raising municipal revenues by direct taxation only, and leaving the local trade entirely free. But in so poor a country as India, it will, in the judgment of the Governor General in Council, be more commonly the best course to combine direct with indirect taxation; for by this means alone can a sufficiently broad base be secured for raising a sufficient income without undue pressure on individuals. So long as octroi-duties on grain and other articles of consumption are kept at a moderate rate, they do not injuriously affect small retail-transactions with which the poorer classes are mainly concerned. That such duties are commonly far more popular in India than any direct taxation is a strong argument in their favour, and the prejudice against them, founded on the common practice of England, should not be allowed to prevent their

introduction under suitable limitations where there is reason to think that the general feeling would be to prefer them to other forms of taxation."

"The Government of India still holds this view. It makes no objection to octroi-duties so long as they are properly regulated, but it refuses to allow them to become taxes on the general trade of the country. With reference to the question of their popularity, I may add that it often happens that the greater the popularity of those taxes, the more objectionable they are, for often in practice this popularity—as in the case I have just given of Karáchí—only means that the people of the town have managed to provide for their own local wants without placing any burden on themselves; that they have transferred their own proper burdens to the shoulders of other people, and thus the popularity of the tax leads sometimes to its being grossly abused. The Government of India having, as I have said, not succeeded in its efforts to reform all this by executive order, has come to the conclusion that the only certain remedy is to be found in legislation, which will place on all local authorities obligations impossible to be disregarded; which will prevent these duties operating as transit-duties or interfering with the general interests of trade, and which will guard against collision with imperial taxation or with the general principles of our commercial policy.

"The main features of the Bill which I am asking for leave to introduce will be as follows. It will prohibit the levy under any circumstances of any duty upon any article not intended for actual consumption within the limits of the municipality in which the duties are levied.

"The articles which may be taxed, and which may not be taxed, will be enumerated. They will be generally those on which taxation was authorized or prohibited in 1868, by the orders to which I have already referred. The Bill will contain provisions for securing, when necessary, the establishment of proper bonded warehouses and for securing that all due facilities are given for refunds.

"The farming of duties to contractors will be prohibited. The Bill will contain provisions by which it is hoped that the improper levy of duties on articles of through trade or on anything not actually consumed in the town will be effectually prevented, and there will be provisions regulating the rates at which the duties may be levied.

"Besides dealing with this matter of octroi-duties the Bill will define the conditions under which tolls may be levied in municipalities, for this also has been found by experience to be very necessary. The general principle will

be affirmed that tolls may be levied only for the purpose of defraying the cost of construction of a particular work, or for its maintenance. If the Bill be introduced, it will at once be sent to all Local Governments, Chambers of Commerce and other local authorities, for their opinion.

"The Government does not disguise from itself the fact that a measure of this kind may often have serious effects in reducing existing municipal revenues, and the manner in which, in cases where the expenditure cannot be reduced, loss of income of this kind is to be made good, will require careful consideration by the Local Governments and the municipal authorities. The Government of India desires to give ample time for such consideration, and it will have no wish to force on with undue haste changes which it knows it may often be difficult to make in the existing system of municipal taxation. It will treat with care and liberality all representations that may be made on this subject; but the Government desires that it should everywhere be distinctly understood that it will not any longer tolerate the neglect of principles essential to the interests of the general commerce of the country."

The Motion was put and agreed to.

GLANDERS AND FARCY BILL.

The Hon'ble Mr. Stokes introduced the Bill for the better prevention of Glanders and Farcy among Horses. He said that the Bill was of the shortest and simplest character, but would not on that account, he hoped, be the less effective. It enabled the Local Government to appoint Inspectors, who would be public servants within the meaning of the Penal Code, and would therefore have the powers and be subject to the liabilities conferred and imposed on such persons by that Code. These Inspectors would be authorized to search for and to seize horses which they had reason to believe to be diseased, and on the certificate of a duly appointed veterinary surgeon, who would examine the animals, to destroy any horses affected with glanders or farcy. The owners or persons in charge of diseased horses would be bound to give immediate notice of the disease either to the Inspector or to some officer of Police. The Bill did not—like the corresponding English enactment—expressly provide that the officer of Police, to whom such notice was given, should communicate with the Inspector; but such a provision was unnecessary, as the Executive Government could, and doubtless would, give the necessary order. The buildings or other places in which diseased horses might have been kept were to be disinfected, and their internal fittings destroyed. There was a prohibition in the Bill against removal, without license, of a horse which had been with a diseased horse, and there were provisions regarding vexatious entries, searches and

seizures. The Local Government was empowered to make rules for regulating entries and searches by the Inspectors, for the destruction of horses certified to be destroyed, for the disposal of their carcasses, and for the disinfecting of buildings and places in which diseased horses had been.

That was the nature of the Bill, and he thought such a measure could hardly be simpler. He would now refer to another matter which was mentioned by his hon'ble and gallant friends, the Commander-in-Chief and Sir Edwin Johnson, as to the propriety of including in the present Bill the so-called Ludhiána disease. On that point, he had said that he did not know what the Ludhiána disease was, and he had objected to legislating about it until inquiry had shown the necessity for doing so. Since the last meeting of Council, however, inquiries had been made, and information had been received on the subject from probably the most competent authority in India on such a matter—Mr. Griffith Evans—at present acting for the principal Veterinary Surgeon of the Army.

Mr. Evans said that the Ludhiána disease was not to be placed in the same category as glanders, except that they were both classed among the specific diseases; that was, diseases due to a specific virus. The virus, however, was different in the two cases. Furthermore, he said, that the history of the Ludhiána disease was entirely against the idea of its being infectious or contagious in the common acceptation of those terms; but that it was readily communicated by inoculation For instance, Mr. Evans said that less than a drop of the blood of a diseased animal, if introduced into the circulation of another animal, would communicate the disease. Flies, he said, had been known to communicate the disease in that way; but it was difficult to communicate the disease except through some opening in the circulation. Mr. Evans had further informed the Secretary in the Military Department, Colonel Allen Johnson, that the cause of this Ludhiána disease was foul, bad stabling with unremoved putrid soil, and the only precaution to be taken before death was segregation. He further said that the animals affected were not dangerous in life, the virus being in the blood. They should not therefore be killed. When, however, they died, they should, according to Mr. Evans, be buried and cut up when in the earth, in order to prevent *doms* and outcastes from exhuming the bodies. It was clear, MR. STOKES thought, that if there was to be legislation respecting this Ludhiána disease, it might properly be by a separate Bill. Considering the great urgency with which, in view of the present state of affairs on the frontier, the present measure was required, he would now ask His Excellency the President to suspend the Rules for the conduct of Business.

The Hon'ble MR. STOKES applied to the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. STOKES then moved that the Bill be taken into consideration.

The Hon'ble SIR EDWIN JOHNSON said that, as the question of dealing with the Ludhiána disease in the present Bill had been raised by him, it was scarcely necessary for him to state, in view of the inquiry instituted since the last meeting of the Council and the result of which had been read to them by his hon'ble friend Mr. Stokes, that he entirely concurred in the omission from the present Bill of any legislation in regard to the disease in question.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

BURMA SURVEY BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to provide for the survey and demarcation of land in British Burma. He said that it would be in the recollection of the Council that, when he had the honour to introduce the Bill for the improvement of the rural Police in British Burma, he made allusion to the intention, which was then contemplated, of introducing a cadastral survey into the Province. As the Rural Police Bill depended partly on the increase of the rate at which the local cesses were raised, and those cesses were based upon the land-revenue, the reference to the cadastral survey was in connection with the arrangements in that Province for the better improvement of the land and the adjustment of the land-revenue. When he spoke of an intention to introduce the cadastral survey into Burma, he should more properly have expressed himself if he had said that last cold season such a measure had been already tentatively introduced into the Province; since then much experience had been gained and changes had been made in the principles upon which the survey was to be conducted, and it was now settled that it should not be so limited in its operation, but should be directed to much more detailed work, and to a regular professional field-survey. Such a work was now in hand by the two survey-parties employed in the Rangoon and Bassein districts, and so far as it had gone, it had been attended with the most satisfactory results. He (MR. THOMPSON) thought that it was impossible to overrate the importance

or value of such work, either for geographical or administrative purposes, and especially with reference to the proper settlement of land, and the assessment of the land-revenue. With regard, however, to the deputation of the survey-parties to the Province, it was found necessary for the proper conduct of operations that power should be taken under the legislature to enable those officers to carry on many of the duties connected with the cadastral survey—such as the right of entering upon land; the procuring of witnesses and other parties interested in the survey; the clearing of obstructions in the execution of the work; giving compensation for such clearances; the settlement of boundary-disputes, and the procedure, if necessary, in appeal from such decisions; and, finally, and more important of all, the erection of permanent boundary-marks. The Bill would contain provisions for giving legal powers with regard to all those matters. The necessity for such a law had been recognized in all places where surveys on a large scale had been introduced, and it was especially necessary in Burma, where such a difficult operation as the conduct of a survey was entirely a new thing; where boundaries were very imperfectly defined, and the people of the country, and the district-officers who had to deal with the results of the survey, had no experience of the kind to guide them. The necessity, therefore, for legislation in this direction was obvious, and if permission was given to introduce the Bill, he would take the opportunity, at a later stage, of explaining more fully the provisions of the measure.

The Motion was put and agreed to.

FOREIGN JURISDICTION AND EXTRADITION BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to amend the Foreign Jurisdiction and Extradition Act, 1872, be taken into consideration. He said that, in accordance with the suggestion of the Bengal Government and in order to save trouble to those who had to work the law, the Committee recommended that the Act of 1872 should be repealed and re-enacted with the new sections incorporated in it.

In drafting the Consolidation Bill, the only substantial alteration we had made consisted in the addition of sections 206, 208 and 224 of the Penal Code to the schedule of extradition-offences. Those sections dealt with (section 206) the fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree; (section 208) fraudulently suffering a decree for sum not due; and (section 224) resistance or obstruction by a person to his lawful apprehension.

We had introduced a definition of "European British subject," a phrase which, if left undefined, was apt to give rise to difficulties; and we had got rid of the phrase "Native State," which was defined and used in a peculiar sense in Act XI of 1872.

In making this latter amendment, we were well aware that, from a logical point of view, the mode in which the phrase "Native State" was defined and used in Act XI of 1872, might not be open to exception; but the extension given to the meaning of the words, going as it did to include as "Native States" all countries in Europe,—even England—was so very wide and arbitrary as to have, in a recent case of some importance, which came before the High Court at Allahabad, given rise to a question as to whether it was really intended by the legislature that Cyprus should be treated as a "Native State." This being so, and seeing that, as the phrase occurred only twice in the Act, little would be gained in point of brevity by retaining it, the Committee had dispensed with it altogether, making such alterations in the sections (8 and 9) in which it occurred as its omission necessitated.

Lastly, we had, with a view to giving effect to the twentieth article of the Treaty recently concluded with Portugal, added a section to provide for the execution in British India of commissions to take evidence issued by criminal Courts in foreign territories. A similar provision was contained in the English Extradition Act, 1870, section 24. The section would not of course apply in the case of any criminal matter of a political character.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

FACTORIES BILL.

The Hon'ble MR. COLVIN moved that the Hon'ble Mr. Batten be added to the Select Committee on the Bill to regulate labour in Factories.

The Motion was put and agreed to.

The Council adjourned *sine die*.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 14th November, 1879.

Government Central Press—No. 184 L. D.—17-12-79.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 24th December, 1879.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir John Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Sayyad Ahmad Khán Báhádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble G. H. M. Batten.

The Hon'ble C. Grant.

The Hon'ble E. C. Morgan.

The Hon'ble J. Pitt-Kennedy.

The Hon'ble G. C. Paul.

RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES presented the further Report of the Select Committee on the Bill to provide for the holding of property by certain Religious Congregations.

MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also presented the further Report of the Select Committee on the Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

TRADES AND PROFESSIONS TAX BILL.

The Hon'ble SIR JOHN STRACHEY moved that the Bill to impose a tax on Trades and Professions be referred to a Select Committee consisting of the

Hon'ble Messrs. Stokes, Thompson, Hope and Colvin, the Hon'ble Mahárájá Jotíndra Mohan Tagore, and the Hon'ble Messrs. Batten, Morgan and Paul and the Mover. He said:—"MY LORD, When this Bill was introduced into the Council, some six weeks ago, I explained the reasons which rendered it desirable that the measure should be passed into law before the end of the year. The most important of these reasons was this, that all the existing License Tax Acts, excepting that in force in Lower Bengal, require the assessments and collections to be made for the calendar year; the demand of the Collector has to be published in the beginning of January, and the tax has to be paid in February. It was, however, found quite impracticable to proceed with the Bill as soon as we had originally hoped to do. We are now holding our first meeting of the Legislative Council in Calcutta on the 24th December; the Bill has not yet been referred to a Select Committee, nor are all the papers connected with it, and all the opinions which have been received regarding it, in the hands of the Members of the Council. Under these circumstances it was clear that the idea of passing the Bill before the end of the year must be abandoned, and the Government had to consider what course should be adopted. The legal difficulties which seemed to render legislation in December necessary have however been got over, for the Government has been advised that it is in its power to give executive orders to the Local Governments, which will have the effect of preventing any fresh assessments or collections being made pending the passing of a new Act. Instructions have been issued accordingly, and no embarrassment will be caused by the delay in legislating. This delay will in other ways be advantageous. There will be more time for the careful consideration of the Bill, and there is another important advantage which we shall gain. It was not altogether satisfactory that a measure of this kind should be enacted at a time when it is not possible to lay before the Council and the public a complete explanation of the financial position, and we shall now postpone, until after the publication of the Budget, the proposal to pass the Bill into law. It must at the same time be remarked, as I have more than once had occasion to say, that all the local authorities lay great stress on the importance of not leaving the work of assessing taxes of this kind until the weather has become so hot that the Collectors and European officers cannot easily visit the places where the assessments are made, and give to the matter their full personal attention. We shall therefore endeavour to bring out the Financial Statement at a somewhat earlier date than usual, and if meanwhile the Select Committee will consider all the details of the Bill, so that they may be able to report upon it as soon as possible after the Statement is made, we may hope that from an administrative point of view the delay in proceeding with the Bill will not be injurious.

"I must now, my Lord, explain to the Council the course which the Government proposes to take.

"We have received a great number of opinions and criticisms, many of them very valuable, from the Local Governments and their officers, from various public bodies, and from other quarters, and the fresh light thus thrown upon the question will, I hope, enable us to make great improvements in the measure as it was originally introduced. I will state to the Council the principal changes which the Government now proposes in the Bill.

"In the first place it has become apparent that the wisdom of repealing all the Local Acts and substituting for them one Imperial enactment is very questionable. Circumstances vary so much in the different provinces of India, and the machinery by which measures of this kind have to be carried out differs so greatly, that there are plainly many advantages in leaving all details to be settled by the local Legislatures and local Authorities, and in contenting ourselves with prescribing those general principles only which we desire should be everywhere carried out. This is, in the present case, the more true, because, as I shall presently explain, the changes which the Government has proposed to make in the local License Acts are really, with one exception, not great, and if the modifications in the Bill which I am about to describe to the Council be adopted, those changes will become still smaller. We now propose to leave all the local Acts in force; certain amendments in the schedules which prescribe the fees to be levied on the various classes and a provision extending the tax to professional men will be required; but this can be done by a very few sections in our Bill, which, so far as it affects the trading and professional classes, will then become a very small measure. A great part of the Bill will disappear altogether, and the provisions of general application to all India will be almost confined to those which extend taxation to the official and salaried classes.

"I will now, my Lord, endeavour to state the principal points on which further explanations are necessary, and it will be convenient that I should first refer to some of the more important objections which have been made to the Bill.

"There has been a very common feeling that the Bill, in the shape in which it was introduced, was hardly to be distinguished from an income-tax on the classes affected by it. The measure has been attacked as an unnecessary and unjustifiable attempt to re-impose, under another name, a hateful impost which was deliberately abandoned by the Government only six years ago. I fear that upon those who do not scruple to attribute to the Government of

India deliberate and habitual dishonesty in all its dealings, words would be wasted in the attempt to prove that we have not been dishonest in this or any other particular instance. But, for the information of more charitable opponents, I am glad to take this opportunity of stating the facts.

"The conclusion having been arrived at that it was proper to extend to the official classes taxation somewhat similar to that which had been imposed under the License Tax Acts on traders, it was clear that there was only one reasonable way in which the decision could be carried out. This was to levy the tax by a percentage on actual salaries. It would have been impossible to have adopted any other plan. It is clear that the only reason for applying to the taxation of traders the system of classification adopted in the License Acts is, that there are no means of ascertaining the exact amount of their incomes, and it is highly desirable to avoid any minute inquisition. If it were possible to find out, by some perfectly unobjectionable means, their real income, everybody would agree that the plan of charging a percentage on that income would be the proper one to adopt. The rough process of assessment by classes necessarily leads to the injustice of taxing persons who have smaller means at the same amount as those who have larger, but this injustice was accepted as the lesser of two evils. In the case of the official classes we know every man's actual salary, and the salaries of the servants of Companies and private persons can easily be ascertained. To tax them in classes, like the traders, and not by a percentage on their salaries, would really be inequitable and indefensible. No one can believe that it would be accepted as reasonable that an officer receiving Rs. 5,000 a year should pay the same tax on his salary as one receiving Rs. 10,000; and no one would accept as a valid reason for such a conclusion the fact that this was the way in which taxation was imposed on persons deriving their incomes from trade.

"When, however, it was determined to tax the officials by a percentage on their salaries, it was naturally felt desirable to make the incidence of the tax on them and on the other classes as equal as was practicable. It was, as the Honourable Mr. Batten pointed out at the last meeting of this Council, an inevitable and logical consequence of this extension of taxation to the officials that the maximum taxes paid by the commercial classes should be raised. It was felt, as he said, that it was not right to tax a high official more heavily than an equally rich man who derived his income from commerce. 'The maximum tax on traders is now' (as Mr. Batten said) 'in Madras Rs. 800; in Bengal Rs. 500; and in Bombay only Rs. 200. Directly it is determined that officials shall be taxed by a percentage on their salaries,

and any other mode of directly taxing them would, I submit, be almost absurd, it becomes impossible to maintain the maximum taxes at the sums which I have mentioned.'

"It was in consequence of all this that the schedule of the present Bill took its present form. The number of classes was increased and the differences between the various classes were diminished. The result was a schedule according to which the taxation on the trading and professional classes would undoubtedly have been assessed under a system nearly approaching the assessment of a percentage on the estimated annual amount of their earnings. In other words, the assessment would have been very like that of an income-tax; and I quite admit that this was hardly consistent with some of my own remarks, or with the Statement of Objects and Reasons, which said that 'the system of classification now in force is generally retained.' In the existing Acts, the system followed was to have a small number of classes. It was always admitted that under such a system there must be a good deal of inequality, and that the burden must fall more heavily on the poorer than on the richer persons included in a class. But this inequality was accepted as a smaller evil than that involved in making an inquisition into individual incomes. I do not, therefore, deny that the schedule to the present Bill, although theoretically much fairer and more logical than the schedules of the existing Acts, is open to the objections to which I have alluded.

"The announcement which I have made that the Government proposes to maintain, with very little alteration, the existing License Tax Acts will, I hope, go far to remove these objections, for I do not see how it can still be said that this is an income-tax in disguise. If the present proposals be adopted, the obnoxious schedule will disappear, and the existing system will remain in force in all its main features.

"There were, my Lord, only two things which the Government in introducing this measure looked upon as essential. It desired in the first place to exempt from taxation a great multitude of people with small incomes. Experience had shown that we were taxing more than a million persons,—I now believe the number to be at least a million and a quarter—for the sake of £240,000 a year. This was clearly neither politically nor financially wise.

"The second object which the Government had was to extend taxation to the official and professional classes. There had been a very general feeling, the justice of which we could not deny, that they ought not to remain untouched when direct taxation was being levied on the traders and land-

holders. This feeling found expression in public meetings, and in memorials of the Chambers of Commerce of all three Presidencies.

"The Government desires that these two objects shall be carried out in the most equitable way possible, and provided that they are gained, it looks upon everything else as matter of detail. It cannot give up these taxes, because it considers it essential to maintain them; but it is most anxious to do everything in its power to reduce their defects to a minimum, and to remove, so far as practicable, every cause of difficulty which it is possible to foresee.

"I will now state as clearly as I can the course which the Government proposes to adopt.

"We desire to make no changes in the existing Acts which are not, in view of the determination to extend taxation to the professional and official classes, unavoidable.

"In regard to the professional classes, it will, I believe, be sufficient to insert in the existing Acts a single section, to the effect that the words 'trade' and 'calling,' wherever they occur, shall be deemed to include a profession.

"In regard to the official and salaried classes, no change of any importance is contemplated by the Government in the Bill as it now stands, but there are some details in regard to which alterations may be found proper. A good deal of complaint has been made regarding the sections which oblige private employers to levy the tax from persons in their employment, and which impose certain liabilities on both parties. These and many other questions will doubtless be considered by the Select Committee, and the Government will accept whatever view appears to the Committee and to the Council to be just.

"In regard to the trading classes, before coming to other matters, there is one announcement of importance which I have to make on behalf of the Government.

"When this Bill was introduced, I stated that the Government proposed that Rs. 250 should be the minimum income liable to this form of taxation, and I said that in fixing this amount we were giving greater relief to the poorer classes of traders than most of the Local Governments think necessary. It is now estimated that by this change we shall exempt not less than 1¼ million persons from taxation, and shall give up revenue to the amount of about £240,000. The Government now proposes to extend this relief still further. We find that by sacrificing an additional sum of about £100,000, we

shall be able to fix the lower limit of liability to the tax at an annual income of Rs. 500, and exempt from taxation at least 250,000 more people. This the Government now proposes to do. There will remain in all India certainly not more than 250,000 traders liable to the tax. The financial result of all the changes thus proposed will be as follows. We now obtain from the license-tax £870,000 a year. We propose to give up a sum of £340,000. We expect on the other hand to obtain £240,000 from the extension of taxation to the professional, official, and salaried classes, and from raising the maximum tax on the commercial classes to the Madras limit, as I shall presently explain. Thus we expect to get altogether from these taxes £770,000, or £100,000 less than the amount which we now receive.

"The effect of these measures will be to remove from the schedules of the existing License Acts (which vary somewhat in their details in different provinces and of which it is not now necessary to speak in detail) those classes and grades including traders whose annual earnings are less than Rs. 500. Since, as I have already explained, we do not propose to repeal the existing Acts, the present classification will otherwise remain unaltered with the following exceptions. In Bombay the maximum fee now payable is Rs. 200; in Bengal, the North-Western Provinces, Oudh, the Punjab, and wherever the Northern India License Act is in force, the maximum fee is Rs. 500; and in Madras it is Rs. 800. We propose to leave the Madras Schedule unaltered; to add in the Bengal and Northern India Schedules one class with a fee of Rs. 800; and to add in Bombay two classes, one paying Rs. 500 and the other paying Rs. 800. Thus the maximum tax at present leviable in Madras will be applied throughout India.

"As, with these exceptions, no change is proposed in the present law so far as it affects the richer classes of traders, the tax will be levied exactly as it is now. Whatever objections there may have been to this form of taxation will no doubt remain, so far as the persons are concerned who are liable to it; but at any rate there will be no ground for the charge that we are completely changing the character of the existing Acts and virtually introducing an income-tax. For in this respect there will be absolutely no alteration in the present system.

"In thus avoiding anything like an income-tax, and as one of the consequences of fixing a maximum fee of Rs. 800 as the highest amount which can be demanded from any trader or professional man however rich, we find ourselves landed in a difficulty.

"The sum of Rs. 800 is much less than that which will be paid by some of the highest officers of Government at the rate of 1½ per cent. on their salaries. The number of officers in this position will, however, be very small. There will be the Viceroy, the Governors of Madras and Bombay, the Lieutenant-Governors, the Commander-in-Chief, the Members of Council, the Chief Justice, and possibly a few others. Excepting these officers, the highest salary paid to any Government officer in India is Rs. 50,000 per annum. One and a half per cent. on this sum would be Rs. 750. Thus, the maximum tax ordinarily paid by the officials, professional men, and traders, will be approximately the same; but there will be this exception, that the few high officers already mentioned will have to pay more, and some of them a great deal more, than Rs. 800 per annum. Your Excellency, for instance, will have the pleasure of paying an annual tax of Rs. 3,600.

"It is, of course, impossible to maintain that this is just, but it is an illustration of the numerous anomalies which must arise under any system of direct taxation short of a general income-tax. It is not so serious an anomaly as others which I could mention; as for instance, that presented by the fact that there are in this Province of Bengal landed proprietors receiving incomes measured in hundreds of thousands of pounds, which are now almost untouched by taxation. The only way in which we could make the richest class of traders and professional men pay as much as the high officers that I have mentioned would be by applying to them a system of assessment virtually the same as that of an income-tax. As we desire to avoid this, we must be content to let these officers pay more than their equally rich neighbours. It would no doubt be possible to fix a maximum of Rs. 800 for the official classes also, but it seems to the Government that this would lead to still worse evils. We could not with propriety, or indeed with decency, say that all Government servants with salaries between Rs. 1,200 and Rs. 50,000 a year shall pay at the rate of 1½ per cent. on their salaries, but that those officers who get more than Rs. 50,000 shall be exempted from paying in proportion. The fact is that the system under which the trading classes are taxed being essentially different from that which is applicable to the officials, it is impossible that the burden should fall with complete equality on both classes alike. I may add that financially this part of the question has little importance. The number of traders and professional men with incomes exceeding Rs. 50,000 a year is very small, and the additional revenue obtained by making them pay more than the maximum license-fee of Rs. 800 would not be great. Taking everything into consideration, it is not worth while to add more classes to the License Acts, merely for the purpose of rendering the law more symme-

trical, and theoretically more equal, and making a few rich traders and professional men pay as much as the highest officials.

"I have now, my Lord, explained all the principal changes which the Government thinks it desirable to make in the Bill now before the Council. If the motion which I am about to make be agreed to, and the Bill be referred to a Select Committee, we shall propose to the Committee to adopt these modifications in the Bill. I have no doubt that the Committee will be able to suggest other improvements.

"It will be observed from all I have said to-day, that, although the Government is quite ready to make many important changes in this Bill, it adheres to the opinion that the taxation of the richer members of the trading, professional, and official classes is essential. They have been contributing little or nothing towards the expenses of the State. Justice and financial considerations alike require that they should so contribute, and it is only by direct taxation that this object can be gained. My Lord, I often read in the newspapers that one of Sir John Strachey's most mischievous delusions is his persistent preference of direct to indirect taxation in India, and that his constant desire is to substitute the former for the latter. My Lord, every man's motives are best known to himself; but, if language be any indication of motive, I may ask my critics to point out any single occasion on which I have said anything of the kind. I affirm, not only that I have never, either in public or in private, maintained any such doctrine, but that no such idea has ever entered into my head. If in formerly approving the imposition of the income-tax and other forms of direct taxation, and in regretting their loss, I have erred, I have erred in company with many of the wisest and most experienced of Indian statesmen, among whom I will now name one only, Lord Lawrence, my honoured and lamented master. No man knew India better than he, and never was there a man who would have more strongly and indignantly refused his consent to measures which he thought must entail injustice and oppression on the people. He believed—and I believe—that there are some classes of the community which have borne no proper part of the public burdens, although no classes are better able than they to bear their share; that it is by direct taxation alone that they can be reached; and that with reasonably good administration, which it is certainly within our power to secure, there is no necessity whatever for any gross abuses in the assessment and collection of taxes of this kind. If we could make these classes contribute in any other way to the necessities of the State, without adding to the burdens of others who already contribute in fair proportion to their means, we should be most glad to do so; but this is impossible. We impose direct taxation

upon them, not because we prefer direct taxation to indirect, but because we must tax them directly or not at all.

"I have been now speaking as if the taxation now proposed ought to be permanently maintained, independently of the actual financial position in particular years, not necessarily with its present details, but at least substantially. Those who differ from this opinion will have ample opportunity of stating their views, since, as I have already said, it is not proposed to ask the Council to pass this measure, nor even to ask the Select Committee finally to report upon it, until the Financial Statement for next year is before the Council and the public. The view that taxation of this kind, although it may be tolerated for a time, in case of unavoidable necessity, ought to be given up whenever the condition of the finances makes it possible to dispense with it, has often been maintained. It has lately been expressed very clearly and temperately and well in the memorial submitted by the Bengal Chamber of Commerce. The Chamber produces evidence, drawn from the accounts and statements published by the Government, to show that there has been a great improvement in our financial position; it says there is a widespread impression that the Government could now afford to dispense with the license-tax altogether, and that before any attempt is made to pass the measure before us into law, a full statement of the present and prospective position of the public finances should be made. I cannot now discuss that position, but the hope with which the memorial of the Chamber concludes has been met by the announcement which I have already made that the final consideration of this Bill will be postponed until after the publication of the Financial Statement. With regard to the general financial position, I can now only repeat what I said when the Bill was introduced, that there has happily been great improvement, that we trust the country has passed through its disastrous and long-continued period of scarcity and suffering, and that the condition and prospects of the finances are highly encouraging and satisfactory.

"I have only a few more words to add. It might be supposed from many of the criticisms which this measure has received, that the Government was proposing to impose fresh and heavy taxation on the country. Nothing could be further from the real intentions of the Government; and I trust the proposed modifications of the Bill will, when they are made in it, remove every disposition to such criticisms; for they will certainly remove every justification for them. The result will be that we shall exempt from taxation about a million and three-quarters of persons who, if not absolutely, are still relatively, poor, and we shall transfer, not the whole, but the greater part, of the burden hitherto borne by these classes to about 35,000 persons, the great majority of whom are more

or less highly paid Government officials. We shall get altogether £100,000 less revenue than we get now. The measure is essentially one which has for its object the equitable readjustment of taxation. It will reduce, not increase, the burdens of the country."

The Hon'ble MR. PAUL said, as a member of this Council he should always be glad to support the necessary measures of the Government, and that he did not now desire to offer any opposition to the principle of this Bill. But he thought there were rules of practice which, under ordinary circumstances, must be observed. The present motion was to refer to a Select Committee a Bill which, as it was introduced, was the one which he held in his hand. That was the Bill which he had studied before coming to the Council meeting, and he now understood, from what the hon'ble the Financial Member had said, no doubt to MR. PAUL's great gratification, that the Bill would be shorn of many of what appeared to be its obnoxious provisions, which were in it as it was presented to the Council. The Government, as he understood the hon'ble Member, pledged itself to make alterations on the lines which had been marked out by the mover of the Bill and to lay them before the Select Committee. It then followed that it was not this Bill which was about to be referred to a Select Committee, but it was the Bill with a number of substantial amendments. That being so, he thought the proper practice was that this Bill should be withdrawn, and another Bill drawn in the manner proposed should then be introduced. If that was done, he should raise a substantial objection to such new Bill. Leave had been given to introduce this Bill, and consequently the Council were on this occasion unable to give their assent to the referring of another and an entirely different Bill. But if a fresh Bill should now be brought forward on the lines which had been indicated by Sir John Strachey, MR. PAUL would then have this objection to raise, that as it appeared on the surface of the plan that had been sketched out before the Council that the necessity for the proposed measure depended upon the publication of a Budget-statement the introduction of such fresh Bill must of necessity be postponed till after the publication of the Budget. He maintained that there was not a single member of the Council who would not be most anxious to support the Government in any necessary measures which the Government was bound to adopt; but, on the other hand, it was nothing but fair that this Council should have before it is called upon to legislate upon any measure, the fullest information, in order that any action taken should appear to be supported by substantial reasons. Therefore he should suggest as an amendment, that this Bill be withdrawn, with liberty to the hon'ble Mover to bring in another Bill.

The Hon'ble MR. KENNEDY said he also, upon the same grounds, must oppose the motion of the Hon'ble the Financial Member as it had been brought forward. It seemed to him that they were not now called upon to refer the Bill which had been before the Council, but to refer another and a wholly different measure, with the principles or details of which, complicated as they were, he had not had an opportunity of becoming sufficiently acquainted to form any opinion whatever. Whether the Bill ought to go to a Select Committee or not, he was not in a position to form an opinion, one way or the other. The Council had before them a Bill which proposed the wise and proper course of consolidating into one Act, this part of the taxation of the country. He did not know whether he was right, but as far as he could understand the expressions used by the Financial Member, the new Bill was to be based on an entirely different principle, leaving outstanding three, or perhaps four, separate financial measures, which were to be how he knew not, in what particular form he knew not: what was to be their independent effect he knew not, but he understood they were to be in some way brought in and incorporated with this measure. That this difficulty of understanding the proposition should arise showed that the objection was not merely technical. It was an objection based on the rules which had been introduced into the Council in order to facilitate the consideration of important measures, and it was an objection which he thought to have considerable weight. When, after asking leave and explaining the grounds upon which the measure was based, the Hon'ble Member in charge asked to refer to a Select Committee a Bill which was not even based on the principles of the Bill which had been introduced, MR. KENNEDY was bound to say that he could not assent to the measure without at least knowing what the grounds of the new measure were.

The Council was told that this was not an income-tax, but though accustomed to deal with refined distinctions he was unable to see any difference between this measure and any other income-tax, save this. The great and broad general objection to an income-tax as it existed in England was, that transitory incomes, which were derived from the exertions and intellects of individuals subject to the vicissitudes of health and trade, were taxed at the same rate as incomes derived from realised property and the common sense of mankind was shocked at the injustice, though arguments were possible for the equal taxation of all incomes. That was not so here. The Financial Minister had taken good care that this precise objection should not apply, because here incomes derived from realised property were exempted, and the tax was imposed merely and exclusively on trades and professions—on the uncertain and fluctuating results of personal exertions. He could not

assent to aiding the progress of a Bill which avoided the objection of equally taxing fluctuating income and realised property by carefully excluding from its operation every form of the latter.

The Hon'ble MR. MORGAN said that, when he came to the Council that day, he was unaware of the important changes which had just been proposed by Sir John Strachey. It was his intention to have opposed the Bill which was now before the Council, on grounds upon which, perhaps, it was not now necessary to enter, inasmuch as that Bill seemed to have lost its existence. But he could not avoid coming to the same conclusion as the Hon'ble Mr. Paul, that there was practically no measure before the Council, and there was no Bill to refer to a Select Committee. The Bill that was on the table proposed to repeal the existing License Tax Acts, but Sir John Strachey had stated that it was not the intention of the Government to repeal those laws, but to retain them, with very slight modifications as they at present stood. Therefore the Bill before the Council seemed to be without meaning: such clauses as applied to official salaries might stand, but otherwise it seemed to have no value; and therefore he was sorry to say he must oppose the motion.

The Hon'ble MR. BATTEN said that the Hon'ble Mr. Paul had, in the commencement of his remarks, suggested that, as the passing of this measure would depend on the condition of the finances, the further consideration of it should be postponed until after the financial statement had been made. Now he (MR. BATTEN) had not gathered from the speech of the Hon'ble Mover that the passing of the measure under discussion depended on the condition of the finances. In fact, it appeared that the financial result of the measure, if passed with the modifications suggested by the Hon'ble Sir John Strachey, would be merely to remit taxation to the amount of £100,000, and that the view of the Government was that, whatever the financial position might be, taxation of the kind proposed by the Bill before the Council ought to form a part of the permanent sources of the revenue. MR. BATTEN was, therefore, unable to understand why the consideration of the measure should be postponed. It was proposed not to pass the Bill until after the financial statement was made, in order to give time for its consideration in Committee and to the opponents of this kind of taxation to give expression to their views on the general question.

Nor did MR. BATTEN follow the Hon'ble and learned Advocate General in his objection to the committal of the Bill in its present form in consequence of the modifications indicated by the Hon'ble Sir John Strachey. He did not know whether the Hon'ble Members who had just spoken had studied the pro-

visions of the four Acts which it was proposed to amend. These Acts were passed in this Council, and in those of Bengal, Madras, and Bombay. It would be found that Chapter II of the Bill now before the Council was little more than a re-enactment of the provisions of those four Acts which the Bill proposed to repeal. The modification indicated by the Hon'ble Sir John Strachey, as approved by the Government, would, instead of repealing and re-enacting the four Acts, leave them alone, which amounted to pretty much the same thing. The schedules alone would be altered, and even in these the alterations would be in the direction of maintaining the present law. No modifications were suggested in that part of the Bill which dealt with the taxation of the salaried classes or the extension of the tax to the professional classes on the same footing as the tax on traders.

The effect of referring this Bill to the Select Committee, after what had been said by Sir John Strachey, would be to enable them to consider its provisions in the light of the modifications which the Government were prepared to make. MR. BATTEN apprehended that the Select Committee would be at liberty to adopt or reject these modifications. If they rejected them, the Government would then have to consider what course it should take. But there seemed to be no sufficient reason for not referring the Bill to the Select Committee.

MR. BATTEN would ask the Council to consider what would be the effect of throwing out the Bill. It would simply be to maintain the four Acts in their present form. The taxation of the Commercial class would remain as it was; the provisions of the law, including the procedure to which so much objection had been taken, would remain in force; the million and a half people whom the Government proposed to relieve of £250,000 taxation would continue to bear that burden, and the richer officials and professional men to whom it was proposed to transfer it would remain free. On these grounds MR. BATTEN cordially supported the motion which had been put to the Council.

The Hon'ble MAHÁRÁJÁ JOTINDRA MOHAN TAGORE said he was inclined to support the view which had been taken by his friend the hon'ble and learned Advocate General, for, the modifications which had been proposed in the Bill, in so far as he understood them, would completely alter its character and make it a new Bill altogether. Moreover, it was now proposed that this tax should no longer be raised, as was originally intended, for the purpose of providing means for meeting famine-expenditure, which was its only justification, but that its proceeds should form a part of the general revenues. On the other hand there was a strong impression, as had been correctly represented by the

Chamber of Commerce and the British Indian Association, that the prospects of the finances had materially improved, and that the retrenchments which were to be effected would result in considerable saving; so much so that it would warrant the expectation of the Government being able to dispense with the License-tax altogether. Under these circumstances he respectfully submitted that, until it was clearly shown that the public impression was unfounded, and the necessity of taxation was fully established, it would be neither expedient nor just to continue a direct tax of this nature, which had caused so much hardship and oppression, and consequent irritation in the public mind. But as it was not possible to get a correct insight into the financial position of Government till the budget-statement was published, he thought it desirable that any Bill for taxation should not be brought on until that time; the more so as the Hon'ble the Financial Member himself proposed not to proceed with this Bill before the publication of the financial statement. And as he thought there could be no great necessity for hurrying on a measure of this nature so long as the Acts now in operation were allowed to remain in force, the better course, in his humble opinion, would be, to wait till the financial exposition was made, and the public allowed an opportunity of knowing how far the Government stood in need of additional taxation. For these reasons he would support the view which had been taken by the Hon'ble Mr. Paul.

The Hon'ble Mr. Colvin said that he entirely concurred in the remarks that had been made by the Hon'ble Mr. Batten in reply to the objection which had been taken by some of the preceding speakers. He did not see how it could be said that the changes suggested in the Bill were so great that they virtually left no motion for consideration by the Council. The changes, which the Financial Member had indicated, were all in the direction of remitting, not of extending, taxation. The Hon'ble Member proposed, for instance, to exempt from taxation a very large number of the lower classes of traders, namely, all those who earned less than Rs. 500 per annum, instead of those only whose earnings were below Rs. 250. Again, as regards the richer classes, he proposed to tax them at a lower rate than they would be assessed at if the Bill remained unaltered. The only extension of taxation which was intended was in respect of the professional, official, and salaried classes; but this extension had formed a part of the original Bill and was not a new proposal to the Council. These being the only alterations suggested, as he had understood the Hon'ble Member, it did not appear to him that their nature was such as to require the introduction of a new Bill; indeed, except in taxing the salaried classes—and to this, as he believed, no exception had ever been taken by anybody—the Bill, so far from making important innovations, would

hardly contain anything that was not a re-enactment of the provisions contained in the existing Acts on the subject.

As to the argument that there is no necessity now for continuing the license-tax at all, he had been glad to hear the Financial Member say that direct taxation in this shape was not to be dependent hereafter on the fluctuations from year to year of the financial position, but was to be treated as a permanent source of revenue. All who had examined the subject must agree that there was no other way by which the trading classes could be made to bear their fair share of the general burden. There were great objections, no doubt, to direct taxation; so there were to indirect taxation. But it was useless to balance their respective merits for the present purpose, because there was no mode of indirect taxation by which trading incomes could be made to contribute in due proportion to the general revenues. It had been urged by the Hon'ble Mahárájá Jotindra Mohan Tagore that the license-tax, which it was proposed now to modify, had been originally justified on the ground that it was intended to supply the means of dealing with famine-expenditure, and that unless, as MR. COLVIN understood him, this tax was strictly appropriated to that one particular purpose, it ought to be abolished. MR. COLVIN was present at the discussions which took place at the time of the introduction of the License Tax Bill, and he certainly had not heard it said that the proceeds of any particular tax were to be devoted to any particular purpose.

[The Hon'ble MAHÁRÁJÁ JOTINDRA MOHAN TAGORE explained that what he had said was, that the general finances were not then in a position to meet the increased expenditure on account of famine, and therefore additional taxation was necessary to provide sufficient means for the payment of those expenses out of the general revenues.]

The Hon'ble MR. COLVIN continued: He now understood the Hon'ble Member to say that the license-tax was introduced because additional taxation was necessary to meet the expenditure on famine, and that, until it was shown that such an addition to the revenues was still required, there was no ground for continuing the license-tax. In that case the answer appeared to him to be that the necessity for the money continued with the necessity for the expenditure, and that the ordinary revenue of the country was still inadequate, without such help, to supply the yearly million or more which is necessary to provide for famine-requirements. He would not base any argument upon the state of the finances in the present year, because he had not sufficient information about them, and because the question did not really turn upon the state of the finances

in one particular year. However prosperous that might be, the conditions of Indian finance did not appear to him to be such that it would be safe, on account of temporary prosperity, to relinquish a permanent branch of the revenue. The gain which had hitherto accrued upon exchange during the current year might be converted into a loss before its close. It was impossible also to shut one's eyes to the constant precariousness of our present opium-revenue. There were other items in the budget regarding which no one could foresee what a year might bring forth. Whatever might be the financial result of any single budget, he could see no sign of the finances becoming so permanently prosperous as to justify the hasty abandonment of a mode of taxation to which both the people who paid, and those who collected, the tax, were becoming familiarized, which was just and expedient in itself, which now yielded about three-quarters of a million sterling, and which might, if occasion arose, yield double that sum. For the reasons which he had given, he should support the motion before the Council.

The Hon'ble MR. HOPE said he should have supposed that the assurances given by the Hon'ble Member in charge of the Bill that the Council would not be called upon to pass the measure, or even the Select Committee to report upon it, until after the Financial Statement and exposition of ways and means for the coming year had been laid before the Council, together with the announcement of considerable additional remissions to which the Government had consented, might have precluded the necessity for further debate. This, however, had unfortunately not been the case; and objections of two important classes had been brought forward. The objection which had been brought forward by the Hon'ble Mr. Paul had been described by himself as being a technical objection.

The Hon'ble MR. PAUL explained that he did not desire to be technical, though his objection was seemingly technical.

The Hon'ble MR. HOPE observed that in that case the method with which he would deal with the first objection was very considerably simplified. The objection appeared to him to amount to this, that the declarations which had been made by the Financial Member were of such an important nature, and so materially altered the measure which was before the Council that morning, as to make that measure entirely non-existent, and that in fact there was now no Bill to refer to a Select Committee, since what was now proposed was a totally different Bill. MR. HOPE was unable to see in what respects the Bill had become a totally different Bill. All that he had heard that day appeared to be

declarations on the part of the Government that it was ready to make larger remissions than the Bill as introduced had provided for, and that it no longer considered it necessary to re-enact certain local laws which were at present in force. He thought that it would remain for the Select Committee to consider those suggestions and declarations; that the Committee would be at liberty to alter the Bill in accordance with the lines which had been sketched out or otherwise, and that it would be in a better position than if a new Bill embodying those suggestions were introduced, because it would not be in any way pledged to the adoption of the principles now suggested, as it might be held to be if it had given leave to bring in and had referred to Committee a new Bill. The Members of the Government on the Committee too would be themselves in a far better position to consider any objections of detail that might be made to the plan which had been sketched out that day than if they stood formally committed to them. It would thus be far more convenient, both for the Government and the Members of the Committee, and more in the interests of the public in general, that the present Bill should be considered by the Committee by the light of the remarks which had been made by the Hon'ble the Financial Member than that this Bill should be withdrawn and a fresh Bill hereafter substituted. On the other hand, there were very considerable advantages in this Bill being referred to a Select Committee on the present occasion in preference to the course which had been suggested (if he understood it rightly) of a new Bill being introduced, but not until the Budget-statement had been made. The advantages were that the Select Committee would have most ample time to consider and elaborate all the details of the Bill; it would be able to study carefully all the reports which had been received and to call for necessary statistics and information from the Local Governments which it might desire. The labours of the Committee would be purely provisional, inasmuch as it would not be called upon to report until after the Budget-statement of the coming year had been made, and it would be at liberty to make any alterations which, after full consideration of the Budget, it might think necessary. If the Council then decided that no taxation was requisite, the Bill would be dropped. If it decided that taxation was necessary, then there would be a measure complete, ready and carefully elaborated at hand. On the other hand, if the course which had been suggested of withdrawing this Bill and introducing a fresh measure after the financial exposition had been made were adopted, there would be considerable delay; the new Bill would necessarily be considered with far more hurry and in a perfunctory manner, while the actual assessment and collection of the tax would be put forward into the hot weather and the rains, and so the checks which were necessary for the prevention of fraud and extortion would be infinitely less, and the tax-payer would suffer.

The other point upon which a few remarks were necessary was in reference to the expectation, which had been expressed by two Hon'ble Members and by the Bengal Chamber of Commerce, that, if the state of the finances proved to be very favourable, the license-tax might be dispensed with. MR. HOPE was not aware that the great scheme of a special insurance against famine, which was deliberately adopted two years ago, had been in any way set aside. He had not heard any declaration which might lead him to suppose that, and he should have been greatly surprised if any such declaration had been made. Whilst that great scheme lasted, it would be obviously inequitable to remit one portion of the taxation which was necessary for the provision of that insurance while retaining another portion. If there was one thing more clear than another, it was that the Council had decided that the non-agricultural portion of the community should pay their own fair share of taxation for protection from famines. He found that in the first debate which took place upon the subject, that of December 19th, 1877, it was distinctly stated that—

"The next very numerous class, although, of course, a small class compared to that of the agriculturists, is the class of traders and artizans. Although prosperous in ordinary times, this is a class on which, when famine occurs, pressure is the first to fall, and it ought to contribute for its own protection. Not only does it now contribute nothing for this purpose, but it is notorious that, throughout nearly the whole of India, although there is no class which benefits so greatly from our rule, there is none which bears so insignificant a share of the expenses of the State."

It was quite unnecessary for MR. HOPE to add a string of quotations to prove that position. It would be enough if, in addition to the quotation he had made, he, with His Excellency's permission, recalled what passed on January 16th, 1878, when a suggestion similar to that which had been made by two Hon'ble Members to-day was made by the Hon'ble Mr. Morgan. He having then urged, as had just been done, that the Budget-statement might shew that new taxation was not required, it was declared by Sir John Strachey that it was "an essential part" of the scheme of famine-insurance "that these new taxes should be imposed equally, as far as one can do these things equally, both upon the commercial and agricultural classes." Again, at a later period, His Honour the Lieutenant-Governor of Bengal made a remark which Mr. Hope took in the same sense :—

"There is no question that the proper principle to follow in respect to the raising of revenue for such purposes as that which has led to the present schemes of taxation is that all having a permanent interest in the welfare of the country should bear their share of its burdens. The measures now before the Council adjust the incidence of taxation upon all interests, whether trading or landed interests."

His Honour THE LIEUTENANT-GOVERNOR here remarked that he thought these quotations were unnecessary, as the Council was not now discussing the question of the principle of the tax.

The Hon'ble MR. HOPE said that he had made these quotations in answer to the remark which had fallen from some Hon'ble Members that this Bill should be withdrawn, as it might hereafter appear that this tax might be dispensed with. He was endeavouring to show that the license-tax could not be dispensed with, as this Council had decided before that it was part of taxation designed to serve as a permanent famine-insurance, and to be contributed by all classes of the people. He therefore considered that the quotations were perfectly pertinent and necessary to his point, and he should continue them unless his Lordship ruled that he was out of order.

His Excellency THE PRESIDENT thought that the Hon'ble Member's remarks were quite legitimate in reply to what had fallen from the Hon'ble Mahárájá Jotindra Mohan Tagore. Moreover, it was in accordance with the Rules to discuss the principle of the Bill on a motion to refer it to a Select Committee

The Hon'ble MR. HOPE then proceeded to say that, on the occasion to which he had been referring, His Lordship the President had concluded with an observation exactly in the same sense as those which MR. HOPE had already quoted, namely :—

"I think, then, I may fairly claim for the measures now before the Council at least the modest merit of an equitable distribution of famine-charges, between the two great classes of the community who are, collectively, best able to bear them, and on whom such charges most reasonably fall."

There was also another reason, quite irrespective of the Budget-question, why such remission of taxation as that suggested should not be made, and it was this. This Council had deliberately confirmed the condition laid down by the Secretary of State that the raiyats should not be made to pay any taxation in the shape of assessment upon the land outside the revenue-assessment, unless a similar amount of taxation were raised from other classes of the community also. Therefore, if the Budget-statement were to show that the sum raised by this tax might be dispensed with, that would not be sufficient, unless it could be also shown that the Government could dispense with the similar amount of taxation derived from the new rates on land. Whether the finances would be in such a position or not MR. HOPE was not able to say.

MR. HOPE would now turn to another and a totally different ground on which he opposed the suggestion that it might be possible to remit this taxa-

tion altogether, if the state of the finances should be favourable. He considered that constant changes of taxation to make up for minor fluctuations of income and expenditure were much to be deprecated. In England the mass of the people were accustomed to watch the commercial and agricultural prosperity of the country, competent to understand changes and causes, and able to accept with intelligent equanimity an extra penny of income-tax, or an increase of duty on some article of consumption. But in India the position was just the reverse, and such a general condition was absolutely unknown. Certain sections of the community, indeed, were able to understand and criticise the financial position as people in England could, if not better. As a rule, the people were in a totally different intellectual and moral condition. Every change which took place was a source of anxiety, of disquietude, of speculation, and of rumours which were often unreasonable and even absurd. He could imagine few conditions more economically and commercially prejudicial, if not politically dangerous, than that all India should come to be thrown annually, from December to March, into a state of doubt and speculation as to what their fiscal burdens for the coming year would be.

Moreover, if constant changes were to be avoided in taxation generally, they were especially so in the case of a direct tax such as that now in question. Whatever might be the difficulties of preventing fraud and extortion in levying such a tax, they were most materially enhanced by constant changes in the rates or by abolition and re-imposition. There had been no less than fifteen different License and Income Tax Acts in the twelve years following the time when Mr. Wilson first introduced his great income-tax, and the changes which had taken place had contributed in no small degree to the irregularities which took place in the collection and to the general unpopularity of the system. Direct taxation was nothing new in India; it formed part of the fiscal system which the British found on acquiring the country; it was still in some parts imposed by the Government in its ancient forms, such as the capitation-tax in Burma and the Pándhari-tax in the Central Provinces, and it might be seen at work in most of the Native States around us. All such taxes were most productive, and proved least oppressive just in proportion as the rates remained unchanged for long periods of time, and the system was so crystallised that the tax-gatherer found no plea for demanding, and had little chance of recovering, if he did demand, more than was notoriously and justly due.

Of course, Mr. Hope continued, fluctuations of income and expenditure must occur; but we should avoid as far as possible perpetually adjusting taxation to fit them. Small fluctuations could be easily dealt with through the

various expedients which loans for reproductive public works, balances, repayment of debt and optional heads of expenditure afforded; larger ones by variations of indirect taxation, which could often be effected without the people being even conscious of increase or decrease, rather than by changes in direct taxes.

Upon these grounds, MR. HOPE trusted that, if the famine-insurance scheme was to be maintained at all, it might be maintained intact in principle. It was, further, much to be desired, though he could hardly hope for so fortunate a result, that the Select Committee would go so thoroughly into the matter as to enable the Council to decide, once for all, the vexed question of twenty years as to whether taxation of the non-agricultural classes could be suitably effected by direct methods of the income or license-tax type, and, if not, to adopt some other method of reaching those classes instead.

His Honour the LIEUTENANT-GOVERNOR said it was not his intention to discuss the principle of this Bill. To the Bill as it stood he had very serious objections, which he should have felt it his duty to urge, if it had not been that the explanations which had been made by his hon'ble friend Sir John Strachey as to the intentions of the Government had met most of his objections. He believed that there was not a single member present who did not condemn the Bill which the Council was now asked to refer to a Select Committee, and no one had condemned it more than the hon'ble Mover himself; and therefore it seemed to him that the Council would be stultifying itself if they accepted the motion, as it amounted to this, that they were asked to refer a Bill to a Select Committee which was not the Bill which the Committee would be asked to consider. Under these circumstances he could not help feeling that the arguments of the learned Advocate General in favour of withdrawing the Bill were very strong and sound. The question before the Council was a question of procedure; the rules for the conduct of business did not contemplate any such mode of procedure as that suggested by Sir John Strachey. Rule 18 provided that when a Bill was introduced the member in charge of it should move either that it be referred to a Select Committee or that it be taken into consideration by the Council, or that it be circulated for the purpose of eliciting opinions thereon. The Council was not asked to accept either of those three courses, which were the only courses really open to it, but to accept a Bill of which they had no knowledge and to refer to a Select Committee a measure which they had no opportunity of considering. HIS HONOUR could see no reason why his hon'ble friend should not do what the learned Advocate General had suggested that he should do, namely to withdraw the present Bill and to introduce another Bill which should really set out the policy and principles which the Government

desired to follow. Either the Government had determined that the License-tax should become a permanent part of the fiscal system of the country under all circumstances and without reference to the condition of the finances, or it had not, but had resolved to leave the question to be settled on the publication of the annual estimates. He understood from the remarks of hon'ble members who seemed to be informed of the intentions of the Government, that it had been finally determined to make the License-tax a permanent tax, and if that were so, he thought that the proper course for the Government to pursue was to withdraw the present Bill which they had avowed themselves unable to support, and lay before the Council a Bill which should represent the real policy of the Government. It was better to say at once what was intended, and there could be no possible object under such circumstances in waiting for the Budget. There would be nothing gained by delay, if the tax was really to be imposed without reference to the state of the finances which the Budget-statement might disclose. The Council should certainly, under no circumstances, be asked to refer to a Select Committee a Bill which it was admitted they were not really to adopt.

If, on the other hand, the passing of a law introducing a License-tax was to be dependent upon the annual estimates—HIS HONOUR gathered it was not—then nothing would be gained by referring this faulty Bill to a Select Committee of the Council, and there was great strength in the objections taken by the Advocate General. An executive Committee appointed by Government could prepare a measure to meet the views of Government, and it could then be brought in whenever it might be found convenient to do so. The question being, as he had said, a mere question of procedure, and the rules of the Council contemplating no such procedure as that suggested by his hon'ble friend, and the motion before the Council not being in accordance with any of the directions of Rule 18 to which he had already referred, he would strongly urge upon the Government the propriety of acceding to the amendment of the Advocate General, to which he had not yet heard a single substantial objection raised.

It had been pointed out by Mr. Batten and Mr. Colvin that the result of following the course of either preparing a new Bill at once, or of leaving the introduction of a Bill until the financial condition of the country should be ascertained, would be that the License Tax Acts as they now stood would remain in force, and a million and a quarter of people, who would otherwise be exempted, would continue to be taxed; that the changes proposed were all in favour of the tax-payers, and that as a consequence of not following the course proposed by the Government, a number of poor traders would remain

subject to the tax for some time longer. It seemed to His Honour that there was no force or truth in that objection. It would make no difference in that respect whether this Bill was withdrawn and another substituted at once, or whether the matter was left to be reported upon a few weeks hence by the Select Committee as proposed by Sir J. Strachey. The present laws would remain in force in precisely the same degree, and the men who were now taxed under them would continue to be taxed. If the Government had determined to remit taxation in respect to the poorer classes of traders, it was open to it by an executive order to exempt them or any other classes affected by the law. That had already been done once, and the Hon'ble Mover had already explained that it was the intention of Government to do it again. The same remarks would apply to the observations which had fallen from the Hon'ble Mr. Hope: the delay would be no greater if the Bill were withdrawn and a proper one substituted than it would be if, as proposed by the Government, the presentation of the report of the Committee should be deferred till after the submission of the annual estimates. His Honour would therefore strongly impress upon the Government that it was desirable, whatever the intention of Government might be as to the permanent character of the License-tax, that it should bring in a Bill in a complete form and present it to the Council. It was surely better to bring in a Bill which should give form to the real intention of Government in such a state that the Council could examine and discuss it before it was referred to a Select Committee for consideration and report.

The Hon'ble Mr. Rivers Thompson said he could see no objection in the rules for the conduct of the business of this Council to the propriety of the course which his hon'ble colleague, Sir John Strachey, had taken in asking that this Bill should be referred to a Select Committee. The question before the Council was simply whether the Bill should be referred to a Select Committee or not, and the motion had been opposed by the hon'ble and learned members opposite on the ground, first, that the Bill as introduced was not the Bill which the Select Committee would have to consider, and secondly, that it would be much better, considering that this Bill dealt with large questions affecting the finances, that its further discussion should be postponed until the Budget-estimates for the year were laid before the Council. This Bill when introduced was called, "The Trades and Professions Tax Bill, 1879," and it was in that character only that it was proposed that it should go before a Select Committee. He did not see that there was any change or alteration in the principle of the measure since it was first brought in; but as then it extended taxation to the professional and salaried classes of the community, who had been previously exempted under the License Acts, as such it remains for the Select Committee

to consider. It seemed to him that if any Hon'ble Member had taken exception to the principle of the proposal as affecting those classes, or had raised any issue upon the question of direct taxation, this was the occasion when such an objection might have been urged. But nothing of this kind had been done. The principle which the Government asserted of the propriety and necessity of imposing a tax on trades and professions remained unaffected; and he should have thought, after the exhaustive statement which his hon'ble friend Sir John Strachey had made as regards the intentions of the Government, all in a beneficial sense, all tending to relieve the poorer classes, even to the surrender of revenue amounting to £100,000, and extending the minimum-limit of taxation to Rs. 500 a year, the concessions would have satisfied hon'ble gentlemen opposite, and left no room for objection to the further progress of the measure.

In regard to the Financial Statement, to the publication of which it was desired to postpone the consideration of the proposals now submitted to the Council, it seemed to him that the sacrifice of £100,000 was not a very large sum for the Government of a country whose revenue and expenditure were something like sixty millions a year. After the fullest consideration, the Government had decided that the License-tax was to be a permanent measure on the broad and general ground that there was every possible justification for imposing a tax on classes which had hitherto been exempt from the payment of any contribution to the necessities of the State. Whether therefore the finances were prosperous or not, or whether in a few weeks hence his hon'ble friend would still be in a position to submit a satisfactory Budget, was immaterial to a question which affected only a small portion of the income, and in view to the resolution which the Government had adopted for equalising the burden of taxation and maintaining this tax as a permanent part of the fiscal administration of the country. With regard to the intention now expressed of retaining the local Acts in force, he would only say that such a course commended itself on the ground that it left to Local Governments the procedure on all details which were suited to their circumstances and of which now they had gained some two years' experience. In some instances this desire had been expressed by Local Governments and it had therefore been decided to adopt that course. He should support the motion that the Bill be referred to a Select Committee.

The Hon'ble SIR A. ARBUTHNOT said that what he had to say in reply to the objection that had been urged by the hon'ble member who commenced the debate after the Hon'ble Sir J Strachey's speech had been delivered, had been in a great measure anticipated by the remarks which had fallen from the Hon'ble Messrs. Batten and Hope, and by those which had just been made by his hon'ble colleague Mr. Rivers Thompson. But he wanted to say, with reference

to the objection which had been advanced by his hon'ble and learned friend Mr. Paul, that that objection appeared to him, notwithstanding his hon'ble friend's disavowal of an intention to raise it as a merely technical objection, to be in substance more or less of the character of a technical objection. It was an objection the validity of which he should be very much disposed to recognize if the measure now before the Council, and which the Council was requested to refer to a Select Committee, were entirely a novel one. If the Government had come to the Council with a new measure of taxation, and at the first meeting after the introduction of the measure had told the Council that while they wished to refer it to a Select Committee, they proposed to make very material alterations in it—in that case SIR A. ARBUTHNOT thought that hon'ble members not in the secrets of the Government would be entitled to demand that before they consented to the reference, the details of the measure should be laid before them in a definite and clear form. But the measure now before them was in substance merely the amendment and modification of a law which had been in force nearly two years. The objects of the amendments had been fully explained to the Council. These objects were, in the first instance, to relieve from taxation a very considerable number of persons—he might say, in relation to the number of persons affected by the measure, an enormous number—from the pressure of taxation, and to bring under its operation certain classes of persons who were not now affected by it, but who, on principles of fair and equal justice, it had been deemed expedient to bring under taxation. The Government admitted that the measure was not in its present lines what could be called a complete measure; they had deferred to the objections which had been frequently raised, and which six years ago had led the Government to abandon an income-tax, but they admitted that in thus abandoning the income-tax, the Government and Legislature were placed under the necessity of exempting from taxation many classes of persons who, they all felt, ought in justice to be made liable to taxation. The question now before the Council was not whether the Bill should be converted into an Income-Tax Bill, but whether its main principle of relieving the poorer classes who were included under the existing Act, and of bringing certain other classes under the tax, should be affirmed; and it appeared to SIR A. ARBUTHNOT that it would be far more convenient, for reasons which had been very fully dwelt upon by the Hon'ble Mr. Hope, that this measure should now go before a Select Committee, than that it should be withdrawn, and a delay of some weeks should take place in framing an amended measure embodying the exact terms of the provisions which his hon'ble friend Sir J. Strachey had sketched out in his speech. It was not perhaps very important that the consequence of delaying the reference to a Select Committee would be, so far as the law was concerned, to keep

the poorer classes liable to taxation; for, as had been pointed out, their exemption could be obtained by an executive order. But the amendment of the present law involved other considerations. It was a measure which, in the hands of the Select Committee, might occupy a good deal of time, and it was one in regard to which it was desirable that the Select Committee should have ample time for consideration and examination.

It would be quite open to the Select Committee, notwithstanding the announcement which had been made by the hon'ble member in charge of the Bill, not to adopt the proposal that the existing Acts should be left in force, subject to an alteration of their schedules. On further consideration it might be deemed more expedient that, as was proposed when the present Bill was introduced into the Council, the whole of the law on the subject should be contained in a single Bill. This was a point which seemed to SIR A. ARBUTHNOT to deserve the careful consideration of the Select Committee, represented as it would be by members of all classes in the Council. The Hon'ble Mr. Batter had shown that substantially it made very little difference whether the proposal to leave in force the greater part of the existing local Acts were carried out, or the Bill were retained in its present form. It was for this reason that SIR A. ARBUTHNOT ventured to designate the objection raised by his hon'ble and learned colleague as being more or less of the character of a technical objection. As he understood the arguments of his hon'ble colleague the Financial Member, the reason which had led him to suggest, and which had led other members of the Government to agree, that this Bill should not be reported upon or passed until the financial statement for the ensuing year was laid before the Council, was this, that it was yet to be determined to what extent the remissions of taxation could be made. The intention of the Government was that a Bill similar in its principles to the existing law, but comprising within its provisions the official and professional classes, and relieving the poorer classes of tradesmen, should be passed; but what the precise rates of taxation should be, and how far the proposed remissions should affect the several classes concerned, were questions which it was not expedient or convenient finally to determine, until the Government were in a position to explain to the Council and to the public the financial situation, as far as they could explain it, when the budget-estimates had been framed. As the Hon'ble Mr. Hope had pointed out, to postpone the further proceeding with this measure until the financial statement had been made, would be to cause what seemed to him (SIR A. ARBUTHNOT) a very inconvenient amount of delay. It would drive the proceedings which would have to be taken for bringing the measure into operation, into the hot weather, and would embarrass the administrative and executive officers very seriously in their work. It seemed to him that the busi-

ness which in any case the Select Committee would have to do, would be better performed with ample time and leisure for consideration, for examination, and, if necessary, for reference to the various Local Governments and Authorities who were concerned in this matter. It would be open to the Select Committee if, when the financial statement was made, the majority of them should consider that there was no necessity for retaining taxation of this kind, to urge that view upon the Council, and it would be then for the collective Council to consider the measure in all its bearings, to take into account, not only the present circumstances, but the prospects and possibilities of the future, with reference to the experience of the past, and bearing in mind these prospects and possibilities, which at the present time they must all feel were possibilities of a very serious character, to determine whether or not it was necessary to maintain a system of direct taxation as a part of the taxation of India. He hoped that under these circumstances, and after these explanations, the Council would allow this measure to go before a Select Committee, in order that it should receive from that body that ample examination and consideration which was necessary, and which the Government desired that it should receive.

His Excellency THE PRESIDENT said, it had not been his intention to make any remarks upon the present occasion, because, although, no doubt the proper time for discussing the principles of a Bill was on the motion for its reference to a Select Committee, yet, as a matter of fact, he might say that since he had had the honour of presiding over this Council, he did not remember an instance in which a Bill had encountered on its way to Committee any serious opposition not indicated at the time of its introduction. The present motion, however, had been opposed by the Hon'ble Mr. Paul on the ground, as His Excellency understood it, that there was practically nothing to refer to the Committee, because the Bill on which leave was asked to go into Committee had been altered out of existence by the statements with which his hon'ble friend Sir John Strachey had accompanied his motion. His EXCELLENCY was unable to understand how it was possible that any Bill before this Council could be altered in its progress through Council by process of announcement. That was a procedure unknown to His EXCELLENCY. The authors of a Bill, whether it were a Government Bill, or a private Bill, were, he conceived, perfectly free to announce in Council their readiness to accept certain alterations of it, if such alterations were approved or recommended by the Select Committee to which it is referred: and announcements of this kind might sometimes be very convenient. But it was not customary, and His EXCELLENCY believed it was not possible, for a Bill to be altered in Council, before it had been considered in Committee. Hon'ble Members could reject this Bill by refusing leave to refer it to a Select Committee, but the Gov-

ernment would certainly oppose any motion made with that object. They could not, however, alter the Bill by the adoption of clauses which were not yet before them. Sir John Strachey had stated on behalf of the Government its intention to propose or accept in Committee certain alterations of the Bill; but, the Government had no intention of withdrawing the Bill, and [illegible] alter it without reference to a Committee. It would be for the Co[illegible]om-mend the alteration or retention of its present clauses; [illegible] ouncil then to accept or reject the recommendation of [illegible]. His Excellency wished to remind the Council that the [illegible] involved in the consideration of this Bill was not w[illegible] imposed, but whether the existing taxati[illegible] tained as it stood, or any portion of it [illegible] the Governor had observed that the [illegible] state its intent[illegible] on a point about which [illegible] thought the intentions of the Government had nev[illegible] question. It was quite true that the maintenance of an a[illegible] revenue, or an additional charge upon revenue, which the G[illegible] had repeatedly declared that they regarded as permanent, would [illegible] affected by the state of our finances; but the possibility or prude[illegible] of lightening the present assessment, or modifying the present incid[illegible] of a permanent tax, was a question which the Council would be be[illegible] to discuss after Hon'ble Members had heard the financial statemen[illegible]

The [illegible] put, the Council divided.

[illegible]es.	*Noes.*
[illegible] Charles Grant.	The Hon'ble G. C. Paul.
[illegible]le G. H. M. Batten.	The Hon'ble J. Pitt-Kennedy.
[illegible]'ble B. W. Colvin.	The Hon'ble E. C. Morgan.
[illegible]on'ble T. C. Hope.	The Hon'ble Jotindra Mohan Tagore.
[illegible] Hon'ble Sayyad Ahmad Khán.	His Honour the Lieutenant-Governor.
[illegible]ne Hon'ble Rivers Thompson.	
The Hon'ble Whitley Stokes.	
The Hon'ble Sir E. B. Johnson.	
The Hon'ble Sir J. Strachey.	
The Hon'ble Sir Andrew Clarke.	
The Hon'ble Sir A. J. Arbuthnot.	
His Excellency the Commander-in-Chief.	
His Excellency the President.	

So the Motion was carried.

...RY BILLS.

The Ho... ...oved that the Hon'ble Mr. Morgan be added to the S... the following Bills :—

...tration of Trade-marks.

...ping.

and ... relating to Promissory Notes, Bills of Exchange and C...

...

...BILLS.

...MR. STOKE... that the Hon'ble Messrs. Grant, Kennedy and Paul be added to t... mittees on the following Bills :—

To define and amend the law ... romissory Notes, Bills of Exchange and Cheques.

To define and amend the law relati... sfer of Property.

To define and amend the law relating ... islands and abandoned river-beds.

To provide for the grant of probates of w... of administration to the estates of certain deceased persons.

To make further provision for the grant of pro... and letters of administration in non-contentious cases.

The Motion was put and agreed to.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. ... to the Select Committee on the Bill relating to Merchant Shipping.

The Motion was put and agreed to.

FACTORIES BILL.

The Hon'ble MR. COLVIN moved that the Hon'ble Mr. Grant be added the Select Committee on the Bill to regulate labour in Factories.

The Motion was put and agreed to.

The Council adjourned to Friday, the 9th January, 1880.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 24th Decemb... 1879.